

By the Committees on Rules; Commerce and Tourism; and Transportation; and Senators Passidomo, Perry, and Hutson

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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.; revising the definitions of the terms  
4       "motor vehicle dealer," "franchised motor vehicle  
5       dealer," "independent motor vehicle dealer," and  
6       "wholesale motor vehicle dealer"; deleting the  
7       definition of "motor vehicle broker"; adding an  
8       exception to the prohibition against persons other  
9       than licensed motor vehicle dealers from advertising  
10      for sale or lease any motor vehicle belonging to  
11      another party; authorizing owners of motor vehicles  
12      titled in their names to advertise and offer motor  
13      vehicles for sale on their own behalf, provided such  
14      vehicles are acquired and sold in good faith and not  
15      for the purpose of avoiding specified requirements;  
16      prohibiting a licensed motor vehicle dealer from  
17      allowing any person other than its bona fide employee  
18      to use its motor vehicle dealer license for the  
19      purpose of acting in the capacity of or conducting  
20      motor vehicle lease transactions as a motor vehicle  
21      dealer; providing that any person acting in violation  
22      of specified licensing requirements or misrepresenting  
23      to any person his or her relationship with any motor  
24      vehicle dealer is deemed to have committed an unfair  
25      and deceptive trade practice in violation of specified  
26      provisions; requiring, within a specified timeframe,  
27      the Department of Highway Safety and Motor Vehicles to  
28      deliver or mail to each licensee the necessary renewal  
29      forms along with a statement that the licensee is

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30 required to complete any applicable continuing  
31 education or industry certification requirements;  
32 deleting certain continuing education and  
33 certification requirements; requiring any licensee who  
34 does not file his or her application and fees and any  
35 other requisite documents, as required by law, before  
36 the license expiration date to cease engaging in  
37 business as a motor vehicle dealer on the license  
38 expiration date; requiring applications received by  
39 the department for renewal of independent motor  
40 vehicle dealer licenses to certify that the dealer has  
41 completed continuing education before filing the  
42 renewal forms with the department, subject to certain  
43 requirements; providing requirements for continuing  
44 education and dealer schools; authorizing such schools  
45 to charge a fee for providing continuing education;  
46 requiring applications received by the department for  
47 renewal of franchised motor vehicle dealer licenses to  
48 certify that the dealer has completed certain industry  
49 certification before filing the renewal forms with the  
50 department, subject to certain requirements; providing  
51 requirements for industry certification and certain  
52 statewide industry associations of franchised motor  
53 vehicle dealers; authorizing an association to charge  
54 up to a specified fee for providing the industry  
55 certification; providing for annual adjustments to the  
56 maximum fee, beginning on a specified date;  
57 authorizing industry certification for licensees  
58 belonging to a dealership group to be accomplished by

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59 a certain designated person; defining the term  
60 "dealership group"; requiring a licensee who seeks to  
61 satisfy the certification through a dealership group  
62 to provide the department with certain evidence at the  
63 time of filing the certificate of completion;  
64 providing an effective date.  
65

66 Be It Enacted by the Legislature of the State of Florida:  
67

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

71 320.27 Motor vehicle dealers.—

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

76 (c) "Motor vehicle dealer" means any person engaged in the  
77 business of buying, selling, or leasing ~~dealing in~~ motor  
78 vehicles or offering or displaying motor vehicles for sale or  
79 lease at wholesale, excluding sales from a manufacturer, factory  
80 branch, distributor, or importer licensed pursuant to s. 320.61  
81 to a franchised motor vehicle dealer licensed pursuant to this  
82 section, or at retail, or who may service and repair motor  
83 vehicles pursuant to an agreement as defined in s. 320.60(1).  
84 Any person who buys, sells, or leases ~~deals in~~ three or more  
85 motor vehicles in any 12-month period or who offers or displays  
86 for sale or lease three or more motor vehicles in any 12-month  
87 period is ~~shall be~~ prima facie presumed to be a motor vehicle

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88 dealer. Any person who engages in any of the following  
89 activities is deemed to be a motor vehicle dealer: possessing,  
90 storing, advertising, or displaying motor vehicles that such  
91 person offers for retail sale or lease; compensating customers  
92 for vehicles at wholesale or retail, also known as trade-ins;  
93 negotiating with customers regarding the terms of sale or lease  
94 for a motor vehicle offered for retail sale or lease by such  
95 person; providing test drives of motor vehicles that such person  
96 offers for retail sale or lease; delivering or arranging for the  
97 delivery of a motor vehicle in conjunction with the retail sale  
98 or lease of the motor vehicle by such person engaged in such  
99 ~~business. The terms "selling" and "sale" include lease purchase~~  
100 ~~transactions. A motor vehicle dealer may, at retail or~~  
101 ~~wholesale, sell a recreational vehicle as described in s.~~  
102 ~~320.01(1)(b)1.-6. and 8., acquired in exchange for the sale or~~  
103 ~~lease of a motor vehicle, provided such acquisition is~~  
104 ~~incidental to the principal business of being a motor vehicle~~  
105 ~~dealer. However, a motor vehicle dealer may not buy a~~  
106 ~~recreational vehicle for the purpose of resale unless licensed~~  
107 ~~as a recreational vehicle dealer pursuant to s. 320.771. A motor~~  
108 ~~vehicle dealer may apply for a certificate of title to a motor~~  
109 ~~vehicle required to be registered under s. 320.08(2)(b), (c),~~  
110 ~~and (d), using a manufacturer's statement of origin as permitted~~  
111 ~~by s. 319.23(1), only if such dealer is authorized by a~~  
112 ~~franchised agreement as defined in s. 320.60(1), to buy, sell,~~  
113 ~~or deal in such vehicle and is authorized by such agreement to~~  
114 ~~perform delivery and preparation obligations and warranty defect~~  
115 ~~adjustments on the motor vehicle; provided this limitation shall~~  
116 ~~not apply to recreational vehicles, van conversions, or any~~

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117 ~~other motor vehicle manufactured on a truck chassis. The~~  
118 ~~transfer of a motor vehicle by a dealer not meeting these~~  
119 ~~qualifications shall be titled as a used vehicle. The~~  
120 classifications of motor vehicle dealers are defined as follows:

121 1. "Franchised motor vehicle dealer" means any person who  
122 engages in the business of repairing, servicing, buying,  
123 selling, or leasing ~~dealing in~~ motor vehicles pursuant to an  
124 agreement as defined in s. 320.60(1). A motor vehicle dealer may  
125 apply for a certificate of title to a motor vehicle required to  
126 be registered under s. 320.08(2)(b), (c), and (d) or s.  
127 320.08(3)(a), (b), or (c), using a manufacturer's statement of  
128 origin as permitted by s. 319.23(1), only if such dealer is  
129 authorized by a franchise agreement as defined in s. 320.60(1)  
130 to buy, sell, or lease such vehicles and to perform delivery and  
131 preparation obligations and warranty defect adjustments on the  
132 motor vehicle. This limitation does not apply to recreational  
133 vehicles, van conversions, or any other motor vehicle  
134 manufactured on a truck chassis. A motor vehicle dealer may not  
135 transfer a manufacturer's statement of origin for a motor  
136 vehicle to any person who intends to sell such motor vehicle in  
137 this state unless such person is a licensed motor vehicle dealer  
138 authorized by a franchise agreement to buy, sell, or lease such  
139 vehicles.

140 2. "Independent motor vehicle dealer" means any person  
141 other than a franchised or wholesale motor vehicle dealer who  
142 engages in the business of buying, selling, or leasing ~~dealing~~  
143 ~~in~~ motor vehicles, and who may service and repair motor  
144 vehicles.

145 3. "Wholesale motor vehicle dealer" means any person who

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146 engages exclusively in the business of buying or, selling, ~~or~~  
147 ~~dealing in~~ motor vehicles at wholesale or with motor vehicle  
148 auctions. Such person shall be licensed to do business in this  
149 state, shall not sell or auction a vehicle to any person who is  
150 not a licensed dealer, and shall not have the privilege of the  
151 use of dealer license plates. Any person who buys, sells, or  
152 deals in motor vehicles at wholesale or with motor vehicle  
153 auctions on behalf of a licensed motor vehicle dealer and as a  
154 bona fide employee of such licensed motor vehicle dealer is not  
155 required to be licensed as a wholesale motor vehicle dealer. In  
156 such cases it shall be prima facie presumed that a bona fide  
157 employer-employee relationship exists. A wholesale motor vehicle  
158 dealer shall be exempt from the display provisions of this  
159 section but shall maintain an office wherein records are kept in  
160 order that those records may be inspected.

161 4. "Motor vehicle auction" means any person offering motor  
162 vehicles or recreational vehicles for sale to the highest bidder  
163 where buyers are licensed motor vehicle dealers. Such person  
164 shall not sell a vehicle to anyone other than a licensed motor  
165 vehicle dealer.

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

169  
170 Notwithstanding anything in this subsection to the contrary, the  
171 term "motor vehicle dealer" does not include persons not engaged  
172 in the purchase, ~~or~~ sale, or lease of motor vehicles as a  
173 business who are disposing of vehicles acquired for their own  
174 use or for use in their business or acquired by foreclosure or

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175 by operation of law, provided such vehicles are acquired and  
176 sold in good faith and not for the purpose of avoiding the  
177 provisions of this law; persons engaged in the business of  
178 manufacturing, selling, or offering or displaying for sale or  
179 lease at wholesale or retail no more than 25 trailers in a 12-  
180 month period; public officers while performing their official  
181 duties; receivers; trustees, administrators, executors,  
182 guardians, or other persons appointed by, or acting under the  
183 judgment or order of, any court; banks, finance companies, or  
184 other loan agencies that acquire motor vehicles as an incident  
185 to their regular business; persons whose sole dealing in motor  
186 vehicles is owning a publication in which, or hosting a website  
187 on which, licensed motor vehicle dealers display vehicles for  
188 sale or lease; persons primarily engaged in the business of the  
189 short-term rental of motor vehicles, which rental term may not  
190 exceed 12 months, who are not involved in the retail sale or  
191 lease of motor vehicles; ~~motor vehicle brokers;~~ and motor  
192 vehicle rental and leasing companies that sell motor vehicles  
193 only to motor vehicle dealers licensed under this section.  
194 Vehicles owned under circumstances described in this paragraph  
195 may be disposed of at retail, wholesale, or auction, unless  
196 otherwise restricted. A manufacturer of fire trucks, ambulances,  
197 or school buses may sell such vehicles directly to governmental  
198 agencies or to persons who contract to perform or provide  
199 firefighting, ambulance, or school transportation services  
200 exclusively to governmental agencies without processing such  
201 sales through dealers if such fire trucks, ambulances, school  
202 buses, or similar vehicles are not presently available through  
203 motor vehicle dealers licensed by the department.

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204 ~~(d) "Motor vehicle broker" means any person engaged in the~~  
205 ~~business of offering to procure or procuring motor vehicles for~~  
206 ~~the general public, or who holds himself or herself out through~~  
207 ~~solicitation, advertisement, or otherwise as one who offers to~~  
208 ~~procure or procures motor vehicles for the general public, and~~  
209 ~~who does not store, display, or take ownership of any vehicles~~  
210 ~~for the purpose of selling such vehicles.~~

211 (2) LICENSE REQUIRED.—No person shall engage in business  
212 as, serve in the capacity of, or act as a motor vehicle dealer  
213 in this state without first obtaining a license therefor in the  
214 appropriate classification as provided in this section. With the  
215 exception of transactions with motor vehicle auctions, no person  
216 other than a licensed motor vehicle dealer may advertise for  
217 sale or lease any motor vehicle belonging to another party  
218 unless as a direct result of a bona fide legal proceeding, court  
219 order, settlement of an estate, ~~or~~ by operation of law, or if  
220 done by a person whose sole dealing in motor vehicles is owning  
221 a publication in which, or hosting a website on which, licensed  
222 motor vehicle dealers display vehicles for sale or lease.

223 However, owners of motor vehicles titled in their names may  
224 advertise and offer motor vehicles for sale on their own behalf,  
225 provided such vehicles are acquired and sold in good faith and  
226 not for the purpose of avoiding the requirements of this  
227 section. It shall be unlawful for a licensed motor vehicle  
228 dealer to allow any person other than its a bona fide employee  
229 to use the motor vehicle dealer license for the purpose of  
230 acting in the capacity of or conducting motor vehicle sales or  
231 lease transactions as a motor vehicle dealer. Any person acting  
232 ~~selling or offering a motor vehicle for sale~~ in violation of the



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233 licensing requirements of this subsection, or who misrepresents  
234 to any person his or her ~~its~~ relationship with any manufacturer,  
235 importer, ~~or~~ distributor, or motor vehicle dealer, in addition  
236 to the penalties provided herein, shall be deemed to have  
237 committed ~~guilty of~~ an unfair and deceptive trade practice ~~as~~  
238 ~~defined~~ in violation of part II of chapter 501 and shall be  
239 subject to the provisions of subsections (8) and (9).

240 (4) LICENSE CERTIFICATE.—

241 (a) A license certificate shall be issued by the department  
242 in accordance with such application when the application is  
243 regular in form and in compliance with the provisions of this  
244 section. The license certificate may be in the form of a  
245 document or a computerized card as determined by the department.  
246 The actual cost of each original, additional, or replacement  
247 computerized card shall be borne by the licensee and is in  
248 addition to the fee for licensure. Such license, when so issued,  
249 entitles the licensee to carry on and conduct the business of a  
250 motor vehicle dealer. Each license issued to a franchise motor  
251 vehicle dealer expires on December 31 of the year of its  
252 expiration unless revoked or suspended before ~~prior to~~ that  
253 date. Each license issued to an independent or wholesale dealer  
254 or auction expires on April 30 of the year of its expiration  
255 unless revoked or suspended prior to that date. At least 60 days  
256 before the license expiration date, the department shall deliver  
257 or mail to each licensee the necessary renewal forms along with  
258 a statement that the licensee is required to complete any  
259 applicable continuing education or industry certification  
260 requirements. ~~Each independent dealer shall certify that the~~  
261 ~~dealer (owner, partner, officer, or director of the licensee, or~~

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262 ~~a full-time employee of the licensee that holds a responsible~~  
263 ~~management-level position) has completed 8 hours of continuing~~  
264 ~~education prior to filing the renewal forms with the department.~~  
265 ~~Such certification shall be filed once every 2 years. The~~  
266 ~~continuing education shall include at least 2 hours of legal or~~  
267 ~~legislative issues, 1 hour of department issues, and 5 hours of~~  
268 ~~relevant motor vehicle industry topics. Continuing education~~  
269 ~~shall be provided by dealer schools licensed under paragraph (b)~~  
270 ~~either in a classroom setting or by correspondence. Such schools~~  
271 ~~shall provide certificates of completion to the department and~~  
272 ~~the customer which shall be filed with the license renewal form,~~  
273 ~~and such schools may charge a fee for providing continuing~~  
274 ~~education. Any licensee who does not file his or her application~~  
275 ~~and fees and any other requisite documents, as required by law,~~  
276 ~~with the department at least 30 days prior to the license~~  
277 ~~expiration date shall cease to engage in business as a motor~~  
278 ~~vehicle dealer on the license expiration date. A renewal filed~~  
279 ~~with the department within 45 days after the expiration date~~  
280 ~~shall be accompanied by a delinquent fee of \$100. Thereafter, a~~  
281 ~~new application is required, accompanied by the initial license~~  
282 ~~fee. A license certificate duly issued by the department may be~~  
283 ~~modified by endorsement to show a change in the name of the~~  
284 ~~licensee, provided, as shown by affidavit of the licensee, the~~  
285 ~~majority ownership interest of the licensee has not changed or~~  
286 ~~the name of the person appearing as franchisee on the sales and~~  
287 ~~service agreement has not changed. Modification of a license~~  
288 ~~certificate to show any name change as herein provided shall not~~  
289 ~~require initial licensure or reissuance of dealer tags; however,~~  
290 ~~any dealer obtaining a name change shall transact all business~~

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291 in and be properly identified by that name. All documents  
292 relative to licensure shall reflect the new name. In the case of  
293 a franchise dealer, the name change shall be approved by the  
294 manufacturer, distributor, or importer. A licensee applying for  
295 a name change endorsement shall pay a fee of \$25 which fee shall  
296 apply to the change in the name of a main location and all  
297 additional locations licensed under the provisions of subsection  
298 (5). Each initial license application received by the department  
299 shall be accompanied by verification that, within the preceding  
300 6 months, the applicant, or one or more of his or her designated  
301 employees, has attended a training and information seminar  
302 conducted by a licensed motor vehicle dealer training school.  
303 Any applicant for a new franchised motor vehicle dealer license  
304 who has held a valid franchised motor vehicle dealer license  
305 continuously for the past 2 years and who remains in good  
306 standing with the department is exempt from the prelicensing  
307 training requirement. Such seminar shall include, but is not  
308 limited to, statutory dealer requirements, which requirements  
309 include required bookkeeping and recordkeeping procedures,  
310 requirements for the collection of sales and use taxes, and such  
311 other information that in the opinion of the department will  
312 promote good business practices. No seminar may exceed 8 hours  
313 in length.

314 (b) Each initial license application received by the  
315 department for licensure under subparagraph (1)(c)2. shall be  
316 accompanied by verification that, within the preceding 6 months,  
317 the applicant (owner, partner, officer, or director of the  
318 applicant, or a full-time employee of the applicant that holds a  
319 responsible management-level position) has successfully

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320 completed training conducted by a licensed motor vehicle dealer  
321 training school. Such training must include training in titling  
322 and registration of motor vehicles, laws relating to unfair and  
323 deceptive trade practices, laws relating to financing with  
324 regard to buy-here, pay-here operations, and such other  
325 information that in the opinion of the department will promote  
326 good business practices. Successful completion of this training  
327 shall be determined by examination administered at the end of  
328 the course and attendance of no less than 90 percent of the  
329 total hours required by such school. Any applicant who had held  
330 a valid motor vehicle dealer's license continuously within the  
331 past 2 years and who remains in good standing with the  
332 department is exempt from the prelicensing requirements of this  
333 section. The department shall have the authority to adopt any  
334 rule necessary for establishing the training curriculum; length  
335 of training, which shall not exceed 8 hours for required  
336 department topics and shall not exceed an additional 24 hours  
337 for topics related to other regulatory agencies' instructor  
338 qualifications; and any other requirements under this section.  
339 The curriculum for other subjects shall be approved by any and  
340 all other regulatory agencies having jurisdiction over specific  
341 subject matters; however, the overall administration of the  
342 licensing of these dealer schools and their instructors shall  
343 remain with the department. Such schools are authorized to  
344 charge a fee.

345 (c) Each application received by the department for renewal  
346 of a license under subparagraph (1)(c)2. must certify that the  
347 dealer (owner, partner, officer, or director of the licensee, or  
348 a full-time employee of the licensee that holds a responsible

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349 management-level position) has completed 8 hours of continuing  
350 education prior to filing the renewal forms with the department.  
351 Such certification must be filed once every 2 years. The  
352 continuing education must include at least 2 hours of legal or  
353 legislative issues, 1 hour of department issues, and 5 hours of  
354 relevant motor vehicle industry topics. Continuing education  
355 shall be provided by dealer schools licensed under paragraph (b)  
356 either in a classroom setting or by correspondence. Such schools  
357 shall provide certificates of completion to the department and  
358 the customer which shall be filed with the license renewal form,  
359 and such schools may charge a fee for providing continuing  
360 education.

361 (d) Each application received by the department for renewal  
362 of a license under subparagraph (1)(c)1. must certify that the  
363 dealer (dealer operator, owner, partner, officer, director, or  
364 general manager of the licensee) has completed 4 hours of  
365 industry certification on legal and legislative issues each year  
366 prior to filing the renewal forms with the department. Industry  
367 certification shall be provided by a Florida-based, nonprofit,  
368 dealer-owned, statewide industry association of franchised motor  
369 vehicle dealers with state and federal compliance credentials  
370 approved by the department, and shall be in a classroom setting  
371 in convenient locations within the state. Such association shall  
372 provide certificates of completion to the department and the  
373 customer which shall be filed with the license renewal form. An  
374 application for renewal of a license previously issued for 1  
375 year must be accompanied by a certificate establishing  
376 completion of 4 hours of industry certification during the prior  
377 year. An application for renewal of a license previously issued

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378 for 2 years must be accompanied by certificates establishing  
379 completion of 8 hours of industry certification, except that  
380 renewal of a 2-year license that expires on December 31, 2019,  
381 must be accompanied by a certificate establishing completion of  
382 4 hours of industry certification. An association may charge a  
383 fee not to exceed \$500 per 4 hours for providing the industry  
384 certification. In 2020 and for each subsequent year, the maximum  
385 fee of \$500 per 4 hours shall be increased by a percentage equal  
386 to the annual Consumer Price Index for All Urban Consumers  
387 calculated for the previous year by the Bureau of Labor  
388 Statistics of the United States Department of Labor. In the case  
389 of licensees belonging to a dealership group, the required  
390 industry certification may be satisfied for all licensees in the  
391 dealership group through completion of the industry  
392 certification by a single designated owner, officer, director,  
393 or manager of the dealership group. For purposes of this  
394 section, the term "dealership group" means two or more licensed  
395 franchised motor vehicle dealers with at least one common  
396 officer or with common owners having legal or equitable title of  
397 at least 50 percent of each dealer in the group. A licensee who  
398 seeks to satisfy the required industry certification through a  
399 dealership group must provide the department with evidence of  
400 the required common ownership at the time of filing the  
401 certificate of completion.

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