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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"; providing that
7 certain motor vehicle dealers who have their motor
8 vehicle dealer licenses revoked may continue to
9 advertise and demonstrate motor vehicles under certain
10 circumstances; deleting the definition of "motor
11 vehicle broker"; adding an exception to the
12 prohibition against persons other than licensed motor
13 vehicle dealers from advertising for sale or lease any
14 motor vehicle belonging to another party; authorizing
15 owners of motor vehicles titled in their names to
16 advertise and offer motor vehicles for sale on their
17 own behalf, provided such vehicles are acquired and
18 sold in good faith and not for the purpose of avoiding
19 specified requirements; prohibiting a licensed motor
20 vehicle dealer from allowing any person other than its
21 bona fide employee to use its motor vehicle dealer
22 license for the purpose of acting in the capacity of
23 or conducting motor vehicle lease transactions as a
24 motor vehicle dealer; providing that any person acting
25 in violation of specified licensing requirements or
26 misrepresenting to any person his or her relationship
27 with any motor vehicle dealer is deemed to have
28 committed an unfair and deceptive trade practice in
29 violation of specified provisions; requiring, within a

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

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59 certification; providing for annual adjustments to the
60 maximum fee, beginning on a specified date;
61 authorizing industry certification for licensees
62 belonging to a dealership group to be accomplished by
63 a certain designated person; defining the term
64 "dealership group"; requiring a licensee who seeks to
65 satisfy the certification through a dealership group
66 to provide the department with certain evidence at the
67 time of filing the certificate of completion;
68 providing an effective date.

69
70 Be It Enacted by the Legislature of the State of Florida:

71
72 Section 1. Paragraphs (c) and (d) of subsection (1) and
73 subsections (2) and (4) of section 320.27, Florida Statutes, are
74 amended to read:

75 320.27 Motor vehicle dealers.—

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

80 (c) "Motor vehicle dealer" means any person engaged in the
81 business of buying, selling, or leasing ~~dealing in~~ motor
82 vehicles or offering or displaying motor vehicles for sale or
83 lease at wholesale, excluding sales from a manufacturer, factory
84 branch, distributor, or importer licensed pursuant to s. 320.61
85 to a franchised motor vehicle dealer licensed pursuant to this
86 section, or at retail, or who may service and repair motor
87 vehicles pursuant to an agreement as defined in s. 320.60(1).

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88 Any person who buys, sells, or leases ~~deals in~~ three or more
89 motor vehicles in any 12-month period or who offers or displays
90 for sale or lease three or more motor vehicles in any 12-month
91 period is ~~shall be~~ prima facie presumed to be a motor vehicle
92 dealer. Any person who engages in any of the following
93 activities is deemed to be a motor vehicle dealer: possessing,
94 storing, advertising, or displaying motor vehicles that such
95 person offers for retail sale or lease; compensating customers
96 for vehicles at wholesale or retail, also known as trade-ins;
97 negotiating with customers regarding the terms of sale or lease
98 for a motor vehicle offered for retail sale or lease by such
99 person; providing test drives of motor vehicles that such person
100 offers for retail sale or lease; delivering or arranging for the
101 delivery of a motor vehicle in conjunction with the retail sale
102 or lease of the motor vehicle by such person engaged in such
103 ~~business. The terms "selling" and "sale" include lease-purchase~~
104 ~~transactions. A motor vehicle dealer may, at retail or~~
105 ~~wholesale, sell a recreational vehicle as described in s.~~
106 ~~320.01(1)(b)1.-6. and 8., acquired in exchange for the sale or~~
107 ~~lease of a motor vehicle, provided such acquisition is~~
108 ~~incidental to the principal business of being a motor vehicle~~
109 ~~dealer. However, a motor vehicle dealer may not buy a~~
110 ~~recreational vehicle for the purpose of resale unless licensed~~
111 ~~as a recreational vehicle dealer pursuant to s. 320.771. ~~A motor~~~~
112 ~~vehicle dealer may apply for a certificate of title to a motor~~
113 ~~vehicle required to be registered under s. 320.08(2)(b), (c),~~
114 ~~and (d), using a manufacturer's statement of origin as permitted~~
115 ~~by s. 319.23(1), only if such dealer is authorized by a~~
116 ~~franchised agreement as defined in s. 320.60(1), to buy, sell,~~

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117 ~~or deal in such vehicle and is authorized by such agreement to~~
118 ~~perform delivery and preparation obligations and warranty defect~~
119 ~~adjustments on the motor vehicle; provided this limitation shall~~
120 ~~not apply to recreational vehicles, van conversions, or any~~
121 ~~other motor vehicle manufactured on a truck chassis. The~~
122 ~~transfer of a motor vehicle by a dealer not meeting these~~
123 ~~qualifications shall be titled as a used vehicle. The~~
124 ~~classifications of motor vehicle dealers are defined as follows:~~

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

144 2. "Independent motor vehicle dealer" means any person
145 other than a franchised or wholesale motor vehicle dealer who

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146 engages in the business of buying, selling, or leasing ~~dealing~~
147 ~~in~~ motor vehicles, and who may service and repair motor
148 vehicles.

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

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

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

173
174 Notwithstanding anything in this subsection to the contrary, the

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175 term "motor vehicle dealer" does not include persons not engaged
176 in the purchase, ~~or~~ sale, or lease of motor vehicles as a
177 business who are disposing of vehicles acquired for their own
178 use or for use in their business or acquired by foreclosure or
179 by operation of law, provided such vehicles are acquired and
180 sold in good faith and not for the purpose of avoiding the
181 provisions of this law; persons engaged in the business of
182 manufacturing, selling, or offering or displaying for sale or
183 lease at wholesale or retail no more than 25 trailers in a 12-
184 month period; public officers while performing their official
185 duties; receivers; trustees, administrators, executors,
186 guardians, or other persons appointed by, or acting under the
187 judgment or order of, any court; banks, finance companies, or
188 other loan agencies that acquire motor vehicles as an incident
189 to their regular business; persons whose sole dealing in motor
190 vehicles is owning a publication in which, or hosting a website
191 on which, licensed motor vehicle dealers display vehicles for
192 sale or lease; persons primarily engaged in the business of the
193 short-term rental of motor vehicles, which rental term may not
194 exceed 12 months, who are not involved in the retail sale or
195 lease of motor vehicles; ~~motor vehicle brokers;~~ and motor
196 vehicle rental and leasing companies that sell motor vehicles
197 only to motor vehicle dealers licensed under this section.
198 Vehicles owned under circumstances described in this paragraph
199 may be disposed of at retail, wholesale, or auction, unless
200 otherwise restricted. A manufacturer of fire trucks, ambulances,
201 or school buses may sell such vehicles directly to governmental
202 agencies or to persons who contract to perform or provide
203 firefighting, ambulance, or school transportation services

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204 exclusively to governmental agencies without processing such
205 sales through dealers if such fire trucks, ambulances, school
206 buses, or similar vehicles are not presently available through
207 motor vehicle dealers licensed by the department. A motor
208 vehicle dealer licensed pursuant to subparagraph (1)(c)1. which,
209 as of July 1, 2018, is wholly owned by a manufacturer licensed
210 pursuant to s. 320.61 and whose dealer license is revoked by a
211 court or administrative order for reasons other than voluntary
212 termination, failure to renew, or disciplinary action may
213 continue to advertise motor vehicles of the line-make for which
214 the dealer was previously licensed, including demonstrating
215 those vehicles to consumers, provided that the sale or lease of
216 such vehicles only occurs through a licensed motor vehicle
217 dealer.

218 ~~(d) "Motor vehicle broker" means any person engaged in the~~
219 ~~business of offering to procure or procuring motor vehicles for~~
220 ~~the general public, or who holds himself or herself out through~~
221 ~~solicitation, advertisement, or otherwise as one who offers to~~
222 ~~procure or procures motor vehicles for the general public, and~~
223 ~~who does not store, display, or take ownership of any vehicles~~
224 ~~for the purpose of selling such vehicles.~~

225 (2) LICENSE REQUIRED.—No person shall engage in business
226 as, serve in the capacity of, or act as a motor vehicle dealer
227 in this state without first obtaining a license therefor in the
228 appropriate classification as provided in this section. With the
229 exception of transactions with motor vehicle auctions, no person
230 other than a licensed motor vehicle dealer may advertise for
231 sale or lease any motor vehicle belonging to another party
232 unless as a direct result of a bona fide legal proceeding, court

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233 order, settlement of an estate, ~~or~~ by operation of law, or if
234 done by a person whose sole dealing in motor vehicles is owning
235 a publication in which, or hosting a website on which, licensed
236 motor vehicle dealers display vehicles for sale or lease.
237 However, owners of motor vehicles titled in their names may
238 advertise and offer motor vehicles for sale on their own behalf,
239 provided such vehicles are acquired and sold in good faith and
240 not for the purpose of avoiding the requirements of this
241 section. It shall be unlawful for a licensed motor vehicle
242 dealer to allow any person other than its a bona fide employee
243 to use the motor vehicle dealer license for the purpose of
244 acting in the capacity of or conducting motor vehicle sales or
245 lease transactions as a motor vehicle dealer. Any person acting
246 ~~selling or offering a motor vehicle for sale~~ in violation of the
247 licensing requirements of this subsection, or who misrepresents
248 to any person his or her ~~its~~ relationship with any manufacturer,
249 importer, ~~or~~ distributor, or motor vehicle dealer, in addition
250 to the penalties provided herein, shall be deemed to have
251 committed ~~guilty of~~ an unfair and deceptive trade practice ~~as~~
252 ~~defined~~ in violation of part II of chapter 501 and shall be
253 subject to the provisions of subsections (8) and (9).

254 (4) LICENSE CERTIFICATE.—

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

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

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291 expiration date shall cease to engage in business as a motor
292 vehicle dealer on the license expiration date. A renewal filed
293 with the department within 45 days after the expiration date
294 shall be accompanied by a delinquent fee of \$100. Thereafter, a
295 new application is required, accompanied by the initial license
296 fee. A license certificate duly issued by the department may be
297 modified by endorsement to show a change in the name of the
298 licensee, provided, as shown by affidavit of the licensee, the
299 majority ownership interest of the licensee has not changed or
300 the name of the person appearing as franchisee on the sales and
301 service agreement has not changed. Modification of a license
302 certificate to show any name change as herein provided shall not
303 require initial licensure or reissuance of dealer tags; however,
304 any dealer obtaining a name change shall transact all business
305 in and be properly identified by that name. All documents
306 relative to licensure shall reflect the new name. In the case of
307 a franchise dealer, the name change shall be approved by the
308 manufacturer, distributor, or importer. A licensee applying for
309 a name change endorsement shall pay a fee of \$25 which fee shall
310 apply to the change in the name of a main location and all
311 additional locations licensed under the provisions of subsection
312 (5). Each initial license application received by the department
313 shall be accompanied by verification that, within the preceding
314 6 months, the applicant, or one or more of his or her designated
315 employees, has attended a training and information seminar
316 conducted by a licensed motor vehicle dealer training school.
317 Any applicant for a new franchised motor vehicle dealer license
318 who has held a valid franchised motor vehicle dealer license
319 continuously for the past 2 years and who remains in good

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

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

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

359 (c) Each application received by the department for renewal
360 of a license under subparagraph (1)(c)2. must certify that the
361 dealer (owner, partner, officer, or director of the licensee, or
362 a full-time employee of the licensee that holds a responsible
363 management-level position) has completed 8 hours of continuing
364 education prior to filing the renewal forms with the department.
365 Such certification must be filed once every 2 years. The
366 continuing education must include at least 2 hours of legal or
367 legislative issues, 1 hour of department issues, and 5 hours of
368 relevant motor vehicle industry topics. Continuing education
369 shall be provided by dealer schools licensed under paragraph (b)
370 either in a classroom setting or by correspondence. Such schools
371 shall provide certificates of completion to the department and
372 the customer which shall be filed with the license renewal form,
373 and such schools may charge a fee for providing continuing
374 education.

375 (d) Each application received by the department for renewal
376 of a license under subparagraph (1)(c)1. must certify that the
377 dealer (dealer operator, owner, partner, officer, director, or

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378 general manager of the licensee) has completed 4 hours of
379 industry certification on legal and legislative issues each year
380 prior to filing the renewal forms with the department. Industry
381 certification shall be provided by a Florida-based, nonprofit,
382 dealer-owned, statewide industry association of franchised motor
383 vehicle dealers with state and federal compliance credentials
384 approved by the department, and shall be in a classroom setting
385 in convenient locations within the state. Such association shall
386 provide certificates of completion to the department and the
387 customer which shall be filed with the license renewal form. An
388 application for renewal of a license previously issued for 1
389 year must be accompanied by a certificate establishing
390 completion of 4 hours of industry certification during the prior
391 year. An application for renewal of a license previously issued
392 for 2 years must be accompanied by certificates establishing
393 completion of 8 hours of industry certification, except that
394 renewal of a 2-year license that expires on December 31, 2019,
395 must be accompanied by a certificate establishing completion of
396 4 hours of industry certification. An association may charge a
397 fee not to exceed \$500 per 4 hours for providing the industry
398 certification. In 2020 and for each subsequent year, the maximum
399 fee of \$500 per 4 hours shall be increased by a percentage equal
400 to the annual Consumer Price Index for All Urban Consumers
401 calculated for the previous year by the Bureau of Labor
402 Statistics of the United States Department of Labor. In the case
403 of licensees belonging to a dealership group, the required
404 industry certification may be satisfied for all licensees in the
405 dealership group through completion of the industry
406 certification by a single designated owner, officer, director,

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407 or manager of the dealership group. For purposes of this
408 section, the term "dealership group" means two or more licensed
409 franchised motor vehicle dealers with at least one common
410 officer or with common owners having legal or equitable title of
411 at least 50 percent of each dealer in the group. A licensee who
412 seeks to satisfy the required industry certification through a
413 dealership group must provide the department with evidence of
414 the required common ownership at the time of filing the
415 certificate of completion.

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