

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 616

INTRODUCER: Commerce and Tourism Committee, Transportation Committee, and Senators Passidomo and Perry

SUBJECT: Motor Vehicle Dealers

DATE: January 23, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 616 amends provisions relating to motor vehicle dealer licensing by the Department of Highway Safety and Motor Vehicles (DHSMV). The bill:

- Expands the definition of “motor vehicle dealer” to include those who lease motor vehicles;
- 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;
- Deletes the following from the definition of motor vehicle dealers:
 - Persons who solely deal in motor vehicles by owning or hosting a publication or website which displays motor vehicles for sale by licensed dealers; and
 - Persons primarily engaged in the business of short-term motor vehicle rentals (rental terms that do not exceed 12 months), who are not involved in the retail sale of vehicles;
- Modifies the definition of “motor vehicle broker;” requires that any advertisement or solicitation by a motor vehicle broker include conspicuous notice that the broker receives a fee and is not a licensed motor vehicle dealer;
- Provides that a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker;
- Requires motor vehicle brokers to be licensed by the DHSMV in order to conduct business in Florida, which includes meeting application requirements, paying licensing fees, and following laws and rules related to licensure;

- Allows persons who contract with a motor vehicle dealer, but are not licensed as motor vehicle dealers, to advertise vehicles that belong to another party for sale;
- Requires pre-licensing dealer training requirements for *all* applicants, including motor vehicle brokers; and
- Allows franchised motor vehicle dealers to renew their license on an annual, rather than biennial, basis.

The bill will likely have a negative fiscal impact on motor vehicle brokers, other persons required to obtain a license from the DHSMV, and licensed dealer training schools. See V. Fiscal Impact Statement. The DHSMV will incur costs associated with an increase of license applications; however, the DHSMV will receive increased application fees in order to review and process such applications.

The bill takes effect January 1, 2019.

II. Present Situation:

The Florida Department of Highway Safety and Motor Vehicles (DHSMV), Division of Motorist Services, regulates motor vehicle dealers and related licenses.¹ The DHSMV licenses, regulates, and assists both licensed dealers and consumers of the motor vehicle industry.² Each year, the DHSMV issues and renews over 13,000 licenses for motor vehicle, auction, salvage, wholesale, mobile home, recreational vehicle dealers and manufacturers, distributors, and importers.³

Section 320.27(1)(c), F.S., defines a “motor vehicle dealer” as any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair vehicles pursuant to a franchise agreement.⁴ A person who buys, sells, offers for sale, displays for sale or deals in three or more motor vehicles in any 12-month period is presumed to be a motor vehicle dealer.⁵

The term “motor vehicle dealer” does not include:⁶

- Persons who dispose of or sell 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;

¹ Section 320.27, F.S.; Florida Department of Highway Safety and Motor Vehicles, *Licensing Requirements for Motor Vehicle Dealers*, <http://www.flhsmv.gov/dmv/dealer.html> (last visited Jan. 19, 2018).

² Florida Department of Highway Safety and Motor Vehicles, *Dealer Handbook, Vol. 17*, p. 9(2015), available at <http://flhsmv.gov/dmv/DealerHandbook.pdf> (last visited Jan. 19, 2018).

³ *Id.*

⁴ 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.”

⁵ Section 320.60(11)(b), F.S.

⁶ Section 320.27(1)(c), F.S.

- 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.

Section 320.27(1)(d), F.S., defines a “motor vehicle broker” as any person who offers to procure or procures motor vehicles for the general public, including soliciting or advertising, 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.

Motor Vehicle Dealer Licenses

Motor vehicle dealers are required to be licensed by the state to conduct business. Currently, there are six classes of motor vehicle dealer licenses:⁷

- *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;
- *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;
- *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.

A person may advertise and offer for sale his or her own vehicle without a motor vehicle dealer license.⁸ Only licensed motor vehicle dealers may offer for sale a vehicle that belongs to another party.⁹ The only exceptions are transactions with motor vehicle auctions or sales that result from a legal proceeding, court order, estate settlement, or by operation of law.

Motor Vehicle Dealer License Application Requirements and Fees

An applicant for initial licensure must submit a preliminary filing to the DHSMV that proposes the site of the motor vehicle dealership, and other relevant information.¹⁰ If a DHSMV Division of Motorist Services Regional Office approves the preliminary filing, the applicant must then submit an application to the DHSMV with required documentation, which may include:¹¹

- A \$25,000 surety bond or a letter of credit;
- The business location’s lease or proof of ownership;
- Pre-licensing dealer training course completion certificate;

⁷ See, note 1, *supra*.

⁸ Section 320.27(2), F.S.

⁹ *Id.*

¹⁰ Florida Department of Highway Safety and Motor Vehicles, *Dealer Handbook, Vol. 17*, p. 37-38 (2015), available at <http://flhsmv.gov/dmv/DealerHandbook.pdf> (last visited Jan. 19, 2018).

¹¹ See s. 320.27, F.S.

- A garage liability insurance certificate, or a general liability insurance policy coupled with a business automobile policy;
- The business' registration with the Florida Department of State, Division of Corporations;
- Specified corporate papers;
- A sales tax number and Federal Employer Identification Number; and
- The applicant's fingerprints for the purpose of performing a background check performed by the Florida Department of Law Enforcement and the Federal Bureau of Investigation.

The application must be coupled with a \$300 fee per main location of the proposed dealership.¹² 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 necessary to conduct such business, which shall be available at all reasonable hours to inspection by the DHSMV.¹³ The applicant also must certify that the motor vehicle dealer business is the principal business conducted at that location.

Upon application approval by the DHSMV, a dealer license is valid until December 31 for franchise motor vehicle dealers and April 30 for independent, wholesale, or auction dealers.¹⁴ A motor vehicle dealer license must be renewed every two years.¹⁵ A license renewal fee is \$75 for the second year; thereafter, motor vehicle dealers may renew their license for a period of one or two years for \$75 for each year. Additionally, a dealer who renews a license with the DHSMV within 45 days after the license's expiration date will be assessed a \$100 delinquent fee.¹⁶ If the renewal is more than 45 days late, a new initial application and application fee is required. Furthermore, a licensee is required to obtain a supplemental license for each permanent additional place of business for a \$50 annual fee.¹⁷ At the appropriate time, a change of location fee of \$50 is assessed, should it apply.¹⁸

Motor Vehicle Dealer Training and Continuing Education Requirements

Initial license applications must include a verification that, within the preceding six months, the applicant (or designated employee) attended a training and information seminar conducted by a licensed motor vehicle dealer training school.¹⁹ The training must review statutory dealer requirements, including required bookkeeping and recordkeeping procedures, and requirements for the collection of sales and use taxes. An applicant who has held a valid motor vehicle dealer's license continuously within the past two years and who remains in good standing with the DHSMV is exempt from this pre-licensing requirement.

¹² See, s. 320.27(3), F.S., Rule 15C-7.003, Fla. Admin. Code, and note 1, *supra*.

¹³ Section 320.27(3), F.S.

¹⁴ Section 320.27(4), F.S.

¹⁵ Section 320.27(3), F.S.

¹⁶ Section 320.27(4), F.S.

¹⁷ Section 320.27(5), F.S.

¹⁸ Section 320.27(3), F.S.

¹⁹ Section 320.27(4), F.S. A list of licensed dealer training schools is available on the DHSMV website. See *Licensed Dealer Training Schools* (Oct. 9, 2017), https://www.flhsmv.gov/pdf/dealerservices/l_dealer_trng_sch.pdf (last visited Jan. 19, 2018).

Applicants who apply for an independent motor vehicle dealer license are required to submit verification to the DHSMV that, within the preceding six months, he or she²⁰ has *successfully completed*²¹ 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 the DHSMV feels will promote good business practices.

Upon renewal of an independent motor vehicle dealer license, the dealer must submit certification to the DHSMV that the dealer²² has completed eight hours of continuing education, which includes at least two hours of legal or legislative issues, one hour of DHSMV issues, and five hours of relevant motor vehicle industry topics.²³

Additional Licensee Requirements

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 misdemeanor,²⁴ and could be liable under civil law in violation of Florida's Deceptive and Unfair Trade Practices Act.²⁵

Section 320.27, F.S., provides requirements for motor vehicle dealers to maintain their licensed status, as well as conduct for which the DHSMV may deny, suspend, or revoke a license. For example, s. 320.27(9)(a), F.S., provides that the 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 the DHSMV. Additionally, the DHSMV may deny, suspend, or revoke a license if a licensee has established a pattern of wrongdoing.²⁶ The terms "licensee" and "motor vehicle dealer" appear to be used interchangeably throughout s. 320.27, F.S.

III. Effect of Proposed Changes:

Motor Vehicle Dealer and Broker Definitions

The bill amends the definitions of "motor vehicle dealer" and "motor vehicle broker." Specifically, the bill expands the term "motor vehicle dealer" to include any person who:

- Leases three or more motor vehicles in any 12-month period;
- Engages in possessing, storing, or displaying three or more motor vehicles for retail sale or lease in a 12-month period;
- Advertises motor vehicles held in his or her inventory for retail sale or lease;
- Compensates customers for vehicles at wholesale or retail (trade-ins);

²⁰ Or an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant. Section 320.27(4), F.S.

²¹ 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.

²² Section 320.27(4), F.S.

²³ Section 320.27(4)(a), F.S.

²⁴ Section 320.27(8), F.S.

²⁵ Part II, ch. 501, F.S.

²⁶ See s. 320.27(9)(b), F.S.

- Negotiates with customers regarding the terms of sale or lease for a motor vehicle;
- Provides test drives of motor vehicles he or she is offering for retail sale or lease; or
- Delivers or arranges for delivery a motor vehicle in conjunction with the retail sale or lease of a motor vehicle.

The bill clarifies that those who own a publication or host a website that displays vehicles for sale by licensed motor vehicle dealers are not required to obtain a motor vehicle dealer license. Additionally, a licensed motor vehicle manufacturer, factory branch, distributor, or importer²⁷ may sell motor vehicles to a franchised motor vehicle dealer without being licensed as a motor vehicle dealer as well.

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 adds that persons, other than licensed motor vehicle dealers, may advertise vehicles that belong to another party for sale or lease if the advertiser contracts with a motor vehicle dealer.

The bill amends the definition of "motor vehicle broker" to clarify that brokers assist the general public in purchasing or leasing a motor vehicle from a licensed dealer. Current law defines a broker's practice as "offering to procure, or procuring motor vehicles for the general public." The bill also requires motor vehicle brokers to give conspicuous notice on any advertisement or solicitation he or she makes that states he or she is receiving a fee and is not a licensed motor vehicle dealer. Additionally, the bill clarifies that a licensed manufacturer, distributor, or importer is not a motor vehicle broker.

The bill also updates the definitions of "franchised motor vehicle dealer," "independent motor vehicle dealer," and "wholesale motor vehicle dealer" to remove the term "dealing in" motor vehicles.²⁸

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

Motor Vehicle Broker Licensing Requirements

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

²⁷ Section 320.61, F.S.

²⁸ Current law refers to each as any person who engages in the business of buying, selling, or dealing in motor vehicles. *See* ss. 320.27(1)(c)2. and 3., F.S.

Pre-licensing Dealer Training and Continuing Education Requirements

The bill extends the licensure requirement that an applicant (or its designated employee) verify that it attended a requisite training and information seminar in its initial application to include motor vehicle brokers.

The bill adds s. 320.27(4)(d), F.S., requiring that each franchised motor vehicle dealer certify 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 the DHSMV may provide the certification, and such association may charge a fee for providing the industry certification. For licensees that belong to a dealership group,²⁹ certification may be satisfied for all licensees by one designated owner, officer, director, or manager of the group. Certification shall be required in a classroom setting in a convenient location within Florida. Designated individuals shall receive certificates of completion, which must be filed with their license renewal form.

Technical Changes and Effective Date

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

The bill takes effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁹ The bill defines “dealership group” as “two or more licensed franchise motor vehicle dealers with a common owner which has legal or equitable title of at least 80 percent of each dealer in the group.”

B. Private Sector Impact:

The bill will likely have a negative fiscal impact on motor vehicle brokers and other persons who will be considered a “motor vehicle dealer” and required to be licensed by the DHSMV.

C. Government Sector Impact:

DHSMV will likely incur costs associated with an increase of license applications; however, DHSMV will receive increased application fees in order to review and process such applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.27 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism on January 22, 2018:**

The CS:

- Excludes from the definition of a motor vehicle dealer a motor vehicle manufacturer, distributor, or importer who is licensed under s. 320.61, F.S., and who sells cars only to a franchised motor vehicle dealer;
- Returns practice to current law by allowing individuals without a motor vehicle dealer license to offer or sell motor vehicle service agreements when a car is sold or leased;
- Prohibits a motor vehicle dealer from transferring a manufacturer’s statement of origin for a motor vehicle to any person who intends to sell the car 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;
- Requires the 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;
- Allows franchised motor vehicle dealers to renew their license on an annual or biennial basis, and provides pro-rated industry certification standards for such filings;
- Maintains the current requirement that each initial application include verification that the applicant successfully attended and training and information seminar, and expands the requirement to include motor vehicle broker applicants;

- Changes the effective date to January 1, 2019; and
- Makes conforming changes throughout.

CS by Transportation on December 5, 2017:

The CS:

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

B. Amendments:

None.