

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 Transportation

BILL: CS/SB 616

INTRODUCER: Transportation Committee and Senator Passidomo

SUBJECT: Motor Vehicle Dealers

DATE: December 5, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 additional activities, including leasing motor vehicles, that would qualify a person to be considered a motor vehicle dealer;
- 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;
- Provides that the following are not considered motor vehicle dealers:
 - Persons whose sole dealing in motor vehicles is owning or hosting a publication or website which displays motor vehicles for sale by licensed dealers is not a motor vehicle dealer; and
 - Persons primarily engaged in the business of short-term rentals of motor vehicles (rental terms that do not exceed 12 months), who are not involved in the retail sale of vehicles;
- Modifies the definition of “motor vehicle broker” and requires that any advertisement or solicitation by a motor vehicle broker include notice that the broker is receiving 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, other than licensed motor vehicle dealers, to advertise vehicles for sale belonging to another party if such person contracts with a motor vehicle dealer;
- Removes pre-licensing dealer training requirements for *all* applicants, instead requiring training for only franchise and independent motor vehicle dealers; and
- Revises training requirements for franchise motor vehicle dealers.

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

The bill takes effect July 1, 2018.

II. Present Situation:

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.¹ 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.

The term “motor vehicle dealer” does not include:²

- Persons not engaged in the purpose or sale of motor vehicles as a business who are disposing of vehicles acquired for their own personal or business use, or acquired by foreclosure or operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding dealer licensing provisions;
- Persons engaged in the business of manufacturing, selling, or offering or displaying for sale no more than 25 trailers in a 12-month period;
- Public officers performing their official duties;
- Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgement or order of, any court;
- Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business;
- Motor vehicle rental and leasing companies that sell motor vehicles to licensed dealers; or
- Motor vehicle brokers.

Section 320.27(1)(d), F.S., defines a “motor vehicle broker” as any person engaged in the business of offering to procure or procuring motor vehicles for the general public, including through solicitation or advertisement, but who does not store, display, or take ownership of any

¹ As defined in s. 320.60(1), F.S., an “agreement” or “franchise agreement” means “a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.”

² Section 320.27(1)(c), F.S.

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.³ They are:

- *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.

Section 320.27(2), F.S., allows motor vehicle owners to advertise and offer for sale vehicles on their own behalf; however, with the exception of transactions with motor vehicle auctions, no person other than a licensed dealer may offer for sale a vehicle belonging to another party unless it is as a result of a legal proceeding, court order, estate settlement, or by operation of law.

Motor Vehicle Dealer License Application Requirements

To become a licensed motor vehicle dealer, a person or persons must have their business site approved by a DHSMV Division of Motorist Services Regional Office, and submit an application to the DHSMV with required documentation and fees, which may include:⁴

- An original \$25,000 surety bond or a letter of credit;
- A copy of the business location's lease or proof of ownership;
- A copy of the pre-licensing dealer training course completion certificate;
- A garage liability insurance certificate, or a general liability insurance policy coupled with a business automobile policy;
- A copy of registration of business with Florida's Secretary of State, Division of Corporations;
- A copy of specified corporate papers;
- A sales tax number and Federal Employer Identification number; and
- Fingerprints of the applicants to be submitted to the Florida Department of Law Enforcement for state processing, and then forwarded to the Federal Bureau of Investigation for federal processing.

Section 320.27(3), F.S., provides that the applicant must certify that the business location is not a residence, provides an adequately equipped office, affords sufficient unoccupied space to store

³ DHSMV website, *Licensing Requirements for Motor Vehicle Dealers*, <http://www.flhsmv.gov/dmv/dealer.html> (last visited Nov. 27, 2017).

⁴ See s. 320.27, F.S., and *Id.*

motor vehicles offered and displayed for sale, and is suitable for keeping and maintaining books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by the DHSMV. The applicant also must certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location.

Pre-licensing Dealer Training and Continuing Education Requirements

Section 320.27(4), F.S., requires each initial license application be accompanied with verification that, within the preceding six months, the applicant (or designated employee) has attended a training and information seminar conducted by a licensed motor vehicle dealer training school.⁵ Such seminar shall review statutory dealer requirements, including required bookkeeping and recordkeeping procedures, and requirements for the collection of sales and use taxes. Any applicant who had 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 such pre-licensing requirements.

Applicants applying for an independent motor vehicle dealer license are required to submit verification to the DHSMV that, within the preceding six months, the applicant, which includes an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant, has *successfully completed*⁶ 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 the motor vehicle dealer license (once every two years), an independent motor vehicle dealer must submit certification to the DHSMV that the dealer⁷ 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.

Motor Vehicle Dealer License Fees

An initial applicant for a motor vehicle dealer license must pay a fee of \$300 to the DHSMV in addition to any other fees required by law.⁸ 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.⁹ License renewal requires a \$75 fee for the second year; thereafter, motor vehicle dealers may renew their license for a period of one or two years for a fee of \$75 for each year.¹⁰ Additionally, a dealer who files license renewal with the DHSMV within 45 days after the license's expiration date will be required to pay a \$100

⁵ 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/1_dealer_trng_sch.pdf (last visited Nov. 30, 2017).

⁶ 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.

⁷ Or an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant.

⁸ Section 320.27(3), F.S.

⁹ Section 320.27(4), F.S.

¹⁰ Section 320.27(3), F.S.

delinquent fee; thereafter, a new initial application and application fee is required.¹¹ Furthermore, a licensee is required to obtain a supplemental license for each permanent additional place of business for a \$50 annual fee.¹²

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 misdemeanor¹³, and could be liable under civil law in violation of Florida's Deceptive and Unfair Trade Practices Act¹⁴.

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 upon proof that a licensee has committed certain acts, with sufficient frequency so as to establish a pattern of wrongdoing on the part of the licensee.¹⁵ 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 adds that the term "motor vehicle dealer" also includes any person:

- Who engages in the business of leasing three or more motor vehicles in any 12-month period;
- Who engages in possessing, storing, or displaying motor vehicles for retail sale or lease;
- Who advertises motor vehicles held in his or her inventory for retail sale or lease;
- Who compensates customers for vehicles at wholesale or retail (trade-ins);
- Who negotiates with customers regarding the terms of sale or lease for a motor vehicle;
- Who provides test drives of motor vehicles he or she is offering for retail sale or lease;
- Who delivers or arranges for delivery a motor vehicle in conjunction with the retail sale or lease of a motor vehicle; or
- Who offers to sell a motor vehicle service agreement at the time of the retail sale or lease of a motor vehicle.

The bill clarifies that a person is not a motor vehicle dealer if his or her sole dealing in motor vehicles is owning a publication or hosting a website that displays vehicles for sale by licensed motor vehicle dealers. The bill adds that persons, other than licensed motor vehicle dealers, may

¹¹ Section 320.27(4), F.S.

¹² Section 320.27(5), F.S.

¹³ Section 320.27(8), F.S.

¹⁴ Part II, ch. 501, F.S.

¹⁵ See s. 320.27(9)(b), F.S.

advertise vehicles for sale or lease belonging to another party if such person contracts with a motor vehicle dealer.

The bill amends the definition of the term “motor vehicle broker,” which the bill defines as any person engaged in the business of, or who holds himself out as being in the business of, assisting the general public in purchasing or leasing a motor vehicle from a licensed dealer, and who does not store, display, or take ownership of any vehicle for the purpose of selling such vehicle. The bill requires any advertisement or solicitation by a motor vehicle broker to include notice that the broker is receiving a fee and clearly state that the broker is not a licensed motor vehicle dealer. Additionally, a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker.

The bill also 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.¹⁶ 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., requiring 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.

Pre-licensing Dealer Training and Continuing Education Requirements

The bill removes the requirement that each initial license applicant provide verification to the DHSMV that the applicant (or designated employee) attended a training and information seminar conducted by a licensed motor vehicle dealer training school.

Section 320.27(4)(b), F.S., of the bill continues to require initial independent motor vehicle license applicants to submit verification regarding a training and information seminar conducted by a licensed motor vehicle dealer training school. However, the bill removes that the seminar must be *successfully completed* by the applicant, which includes an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant. Instead, the bill requires an applicant *or* an applicant’s designated employee to *attend* such seminar.

The bill adds s. 320.27(4)(c)2., F.S., requiring that each franchised motor vehicle dealer certify, every two years, that the dealer operator, owner, partner, director, or general manager of the licensee has completed eight hours of industry certification on legal and legislative issues. Such certification shall be provided by a Florida-based, non-profit, dealer-owned, statewide industry

¹⁶ 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.

association of franchised motor vehicle dealers with state and federal compliance credentials approved by the DHSMV, and such association may charge a fee for providing the industry certification. For licensees belonging to a dealership group¹⁷, 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 changes throughout s 320.27(4), F.S., to provide clarity.

The bill takes effect July 1, 2018.

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.

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.

Due to the removal of pre-licensing dealer training requirements for certain license applicants, the bill may have a negative fiscal impact on licensed dealer training schools.

¹⁷ 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.”

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:

The DHSMV recommends the bill take effect January 1, 2019.¹⁸ DHSMV will be required to add the new broker license type in the Florida Real-Time Vehicle Information System; amend license application forms, bureau procedures, the dealer handbook, and on-line licensing information; train staff and perform stakeholder outreach on new licensing procedures; and establish procedures for handling customer complaints against motor vehicle brokers.¹⁹

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 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 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;
- 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;

¹⁸ DHSMV, *2018 Agency Legislative Bill Analysis – SB 616 – Motor Vehicle Dealers* (Nov. 30, 2017) (on file with the Senate Committee on Transportation).

¹⁹ *Id.*

- 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.