

HOUSE MESSAGE SUMMARY

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BILL: CS/SB 1956, 1st Eng.
SPONSOR: Commerce and Economic Opportunities and Senator Latvala
SUBJECT: Motor Vehicle Dealers/Deceptive Acts
PREPARED BY: Senate Committee on Transportation
DATE: May 3, 2001

I. Amendments Contained in Message:

House Amendment 1 – 582367 (body with title)

II. Summary of Amendments Contained in Message:

House Amendment 1

This amendment addresses a number of highway safety, motor vehicle, and vessel issues. Many of the provisions in the amendment are related to programs administered by the Department of Highway Safety and Motor Vehicles (DHSMV). The amendment revises numerous sections of the Florida Statutes, including the following:

Section 316.1967, F.S., is amended to clarify that persons electing to appear before a court on parking violations are subject to a fine amount designated by county ordinance.

Section 316.228, F.S., is amended to provide that commercial motor vehicles transporting certain forestry-related loads must display an amber strobe light, and clarifies the applicability of the strobe light requirement.

Section 319.23, F.S., is amended to delete a requirement that the Department retain copies of certain documents. The Department is currently maintaining electronic records of title documents.

Section 320.023, F.S., is amended to conform provisions for separate audit and reporting requirements for recipients of these funds to the Florida Single Audit Act (FSAA), s. 215.97, F.S. The FSAA establishes uniform audit requirements for financial assistance provided by state agencies to non-state entities to carry out state projects. The FSAA applies to non-state entities expending \$300,000 or more in state financial assistance annually. Requires an organization receiving proceeds derived from a voluntary check-off on a vehicle registration form to notify DHSMV immediately if the organization ceases to exist, or if it ceases the activity funded by the check-off contribution. Also requires certain organizations seeking to establish a voluntary contribution on a vehicle registration form to register as a charitable organization intending to solicit contributions with the Department of Agriculture and Consumer Services.

Section 320.08056, F.S., is amended exempt the specialty license plates of Barry University and Bethune-Cookman College from the discontinuance requirements, thus applying the exemption to all collegiate specialty license plates. The amendment directs DHSMV to count annual renewals in making its determination whether to discontinue a specialty plate. In addition, it requires an organization receiving proceeds derived from plate sales to notify DHSMV immediately if the organization ceases to exist, or if it ceases the activity funded by the check-off contribution.

Section 320.18, F.S., is amended to provide that DHSMV may cancel the registration or fuel-use decal of a vehicle if the owner has failed to pay a DOT weight or safety violation penalty.

Section 322.161, F.S., is amended to require DHSMV to restrict for one year the driving privilege of class D or E licensees aged 15 through 17 who accumulate six or more points against their license within a 12-month period. A class E licensee who accumulates six points within 12 months is not eligible to obtain a class D license for one year. Current law provides for restrictions upon accumulation of four or more points.

Section 322.2615, F.S., is amended to shorten the time that a temporary permit is valid from 30 days to 10 days after issuance, conforming the permit's validity to the period of time the driver has to request a review of the suspension. When a 30-day temporary driving permit is issued, the driver has 10 days to request review of the suspension. If the driver requests a review, a restricted permit is issued which is valid until the suspension is sustained or invalidated. If a driver does not request review within 10 days, the suspension becomes final on the tenth day and the driver should not have an unrestricted permit that valid for up to 20 additional days.

Section 322.61, F.S., is amended to add two additional grounds for CDL disqualification: (1) violation of an out-of-service order; and (2) violation of laws pertaining to railroad-highway grade crossings. For violations of an out-of-service order the suspension is 90 days to 1 year for a first violation; 1 to 5 years for two violations within 10 years; and 3 to 5 years for three violations within 10 years. These periods are increased for violations that occur while transporting hazardous materials. For railroad-highway grade crossing violations the suspension is a minimum of 60 days for a first violation; a minimum of 120 days for two violations within 3 years; and a minimum of 1 year for three violations within 3 years. These changes conform Florida law to federal commercial carrier safety requirements.

The amendment also implements a number revisions to ss. 320.60-320.699, F.S., relating to the licensing of motor vehicle manufacturers. Section 320.60, F.S., is amended to revise the definition of "motor vehicle dealer" to include licensed franchised motor vehicle dealers who repair or service motor vehicles or certain used motor vehicles for commission, money, or other things of value; and to define "sell" and its various synonyms to include lease transactions. Section 360.61, F.S., is amended to provide no replacement dealer license may be granted pending a dealer complaint of unfair or prohibited cancellation or non-renewal, so long as the dealer agreement of the complaining dealer is in effect as provided under s. 320.641(7), F.S.

Section 320.64, F.S., is amended to provide violations of prohibited acts are sufficient grounds for license denial, suspension, or revocation and makes them subject to penalties provided in ss. 320.695 and 320.697, F.S. These provisions relate to temporary or permanent injunctions, which shall be issued without bond and civil penalties respectively. If a violation by a licensee has occurred, the person who has been affected may recover damages in an amount equal to 3 times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the court. Burden of proof is upon the licensee to prove that a violation or unfair practice did not occur. The amendment provides additional reasons which could justify the denial, suspension, or revocation of a manufacturers' license in Florida.

Section 320.641, F.S., relating to the discontinuation, cancellation, non-renewal, or replacement of franchise agreements is amended to provide that no replacement motor vehicle dealer shall be named and the franchise agreement shall continue in effect until all appeals are exhausted. The amendment provides certain exceptions to this provision. The amendment revises provisions governing certain transfers or franchise agreements.

Section 320.643, F.S., relating to the transfer, assignment, or sale of franchise agreement is amended to allow a manufacturer to use financial qualifications in its determinations regarding a transfer, and allows the dealer to file a complaint in protest of the denial of a transfer. The amendment requires a manufacturer to state reasons for rejecting a transfer, and to provide for approval of the transfer if the manufacturer fails to notify the dealer of the rejection within 60 days. If the licensee fails to provide notification of rejection within the 60 day period the transfer shall be deemed approved.

Section 320.645, F.S., is amended to allow manufacturers to operate motor vehicle dealerships for the exclusive purpose of broadening diversity and improving minority representation. The amendment provides certain definitions. In addition, the amendment does not restrict the business activities of short term rental businesses that sell only used vehicles, perform warranty repairs only on vehicles they sell, and finance the sale of used vehicles only.

Section 320.699, F.S., is amended to require that a hearing on a notice of protest shall not be held sooner than 180 days nor 240 days from the filing of the protest.

Creates s. 320.6991, F.S., specifying that if a provision of the bill or its application to any person or circumstance is held invalid, the other provisions or applications of the act which can be given effect without the invalid provision or application.

Section 320.275, F.S., is created which is the Automobile Dealers Industry Advisory Board within DHSMV. The board would make recommendations on proposed legislation, rules and procedures, and provide industry input to the Department, the Governor and the Legislature.

The amendment codifies most of the violations proscribed in a repealed Department of Legal Affairs rule regarding motor vehicle sales, and specifically provides that certain motor vehicle dealer practices are actionable under the Florida Deceptive and Unfair Trade Practices Act. The amendment also requires a trial court to consider certain information when awarding attorney's fees to a person in civil litigation resulting from a violation of these provisions. The amendment

provides that it is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

- (1) Represent directly or indirectly that a motor vehicle is a factory executive vehicle or executive vehicle unless such vehicle was purchased directly from the manufacturer or a subsidiary of the manufacturer and the vehicle was used exclusively by the manufacturer, its subsidiary, or a dealer for the commercial or personal use of the manufacturer's, subsidiary's, or dealer's employees.
- (2) Represent directly or indirectly that a vehicle is a demonstrator unless the vehicle was driven by prospective customers of a dealership selling the vehicle and such vehicle complies with the definition of a demonstrator in section 320.60(3), Florida Statutes.
- (3) Represent the previous usage or status of a vehicle to be something that it was not, or make usage or status representations unless the dealer has correct information regarding the history of the vehicle to support the representations.
- (4) Represent the quality of care, regularity of servicing, or general condition of a vehicle unless known by the dealer to be true and supportable by material fact.
- (5) Represent orally or in writing that a particular vehicle has not sustained structural or substantial skin damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or his agent to determine whether the vehicle has incurred such damage.
- (6) Sell a vehicle without fully and conspicuously disclosing in writing at or before the consummation of sale any warranty or guarantee terms, obligations, or conditions that the dealer or manufacturer has given to the buyer. If the warranty obligations are to be shared by the dealer and the buyer, the method of determining the percentage of repair costs to be assumed by each party must be disclosed. If the dealer intends to disclaim or limit any expressed or implied warranty, the disclaimer must be in writing in a conspicuous manner and in layman's terms in accordance with chapter 672, Florida Statutes, and the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act.
- (7) Provide an express or implied warranty and fail to honor such warranty unless properly disclaimed pursuant to subsection (6).
- (8) Misrepresent warranty coverage, application period, or any warranty transfer cost or conditions to a customer.
- (9) Obtain signatures from a customer on contracts that are not fully completed at the time the customer signs or which do not reflect accurately the negotiations and agreement between the customer and the dealer.
- (10) Require or accept a deposit from a prospective customer prior to entering into a binding contract for the purchase and sale of a vehicle unless the customer is given a written receipt that states how long the

dealer will hold the vehicle from other sale and the amount of the deposit, and clearly and conspicuously states whether and upon what conditions the deposit is refundable or nonrefundable.

(11) Add to the cash price of a vehicle as defined in section 520.02(2), Florida Statutes, any fee or charge other than those provided in that section and in Rule 3D-50.001, Florida Administrative Code.¹ All fees or charges permitted to be added to the cash price by Rule 3D-50.001, Florida Administrative Code, must be fully disclosed to customers in all binding contracts concerning the vehicle's selling price.

(12) Alter or change the odometer mileage of a vehicle.

(13) Sell a vehicle without disclosing to the customer the actual year and model of the vehicle.

(14) File a lien against a new vehicle purchased with a check unless the dealer fully discloses to the purchaser that a lien will be filed if purchase is made by check and fully discloses to the buyer the procedures and cost to the buyer for gaining title to the vehicle after the lien is filed.

(15) Increase the price of the vehicle after having accepted an order of purchase or a contract from a buyer, notwithstanding subsequent receipt of an official price change notification. The price of a vehicle may be increased after a dealer accepts an order of purchase or a contract from a buyer if:

- A trade-in vehicle is reappraised because it subsequently is damaged, or parts or accessories are removed;
- The price increase is caused by the addition of new equipment, as required by state or federal law;
- The price increase is caused by the revaluation of the U.S. dollar by the Federal Government, in the case of a foreign-made vehicle;
- The price increase is caused by state or federal tax rate changes; or
- Price protection is not provided by the manufacturer, importer, or distributor.

(16) Advertise the price of a vehicle unless the vehicle is identified by year, make, model, and a commonly accepted trade, brand, or style name. The advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing. State and local taxes, tags, registration fees, and title fees, unless otherwise required by local law or standard, need not be disclosed in the advertisement. When two or more dealers advertise jointly, with or without participation of the franchiser, the advertised price need not include fees and charges that are variable among the individual dealers cooperating in the advertisement, but the nature of all charges that are not included in the advertised price must be disclosed in the advertisement.

(17) Charge a customer for any pre-delivery service required by the manufacturer, distributor, or importer for which the dealer is reimbursed by the manufacturer, distributor, or importer.

(18) Charge a customer for any pre-delivery service without having printed on all documents that include a line item for pre-delivery service the following disclosure: "This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."

(19) Add an additional charge for pre-delivery service other than those shown on a conspicuous label attached to the window of the vehicle specifying any charge for pre-delivery services and describing the charges as pre-delivery services, delivery and handling, dealer preparation, or in similar terms the dealer's charge for each dealer-installed option, and a total price line.

(20) Fail to disclose damage to a "new motor vehicle," as defined in subsection 320.60(10), Florida Statutes," of which the dealer had actual knowledge, if the dealer's actual cost of repairs exceeds the threshold amount, excluding replacement items.

Finally, the amendment revises several provisions relating to the towing of vehicles and vessels. Section 713.78, F.S., is amended to add the insurance company to the list of those who must be notified when a vehicle has been towed. The amendment also moves the notice requirement when law enforcement authorizes the removal of a vehicle from s. 715.05, F.S., to s. 713.78, F.S. Finally, the amendment provides that a vehicle may be sold after 35 days if the vehicle is 3 years of age or older, or after 50 days if the vehicle is 3 years of age or less.