

House Bill No. 1077

An act relating to motor vehicle dealers; amending s. 320.27, F.S.; revising education requirements for licensure to provide for a full-time, management-level employee of the applicant or licensee; exempting certain applicants for a new franchised motor vehicle dealer license from certain training requirements; amending s. 320.60, F.S.; revising the definition of “demonstrator” for purposes of provisions relating to manufacturing, importing, and distributing motor vehicles; amending s. 320.64, F.S.; prohibiting specified licensees from failing to pay certain compensation amounts to a motor vehicle dealer after termination of the dealer’s franchise agreement; providing exceptions; providing procedures for payment of the compensation amounts; providing for certain remedies, procedures, and rights of recovery; amending s. 320.642, F.S.; deleting a requirement that certain notices be sent by certified mail; revising conditions under which an opening or reopening of the same or a successor dealer within 12 months is not considered an additional dealer subject to protest; prohibiting for a certain time proposals for a dealer of the same line-make after the opening or reopening of the dealer; providing criteria for measurements of distance between dealer locations; providing that the Department of Highway Safety and Motor Vehicles is not obligated to determine the accuracy of any distance submitted in a notice; providing for resolution of disputed distances by a hearing in accordance with specified provisions; providing an effective date.

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

Section 1. Subsection (4) of section 320.27, Florida Statutes, is amended to read:

320.27 Motor vehicle dealers.—

(4) LICENSE CERTIFICATE.—

(a) A license certificate shall be issued by the department in accordance with such application when the application is regular in form and in compliance with the provisions of this section. The license certificate may be in the form of a document or a computerized card as determined by the department. The actual cost of each original, additional, or replacement computerized card shall be borne by the licensee and is in addition to the fee for licensure. Such license, when so issued, entitles the licensee to carry on and conduct the business of a motor vehicle dealer. Each license issued to a franchise motor vehicle dealer expires annually on December 31 unless revoked or suspended prior to that date. Each license issued to an independent or wholesale dealer or auction expires annually on April 30 unless revoked or suspended prior to that date. Not less than 60 days prior to the license expiration date, the department shall deliver or mail to each licensee the necessary renewal forms. Each independent dealer shall certify that the

dealer ~~principal~~ (owner, partner, officer of the corporation, or director of the licensee, or a full-time employee of the licensee who holds a responsible management-level position) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification shall be filed once every 2 years commencing with the 2006 renewal period. The continuing education shall include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education. Any licensee who does not file his or her application and fees and any other requisite documents, as required by law, with the department at least 30 days prior to the license expiration date shall cease to engage in business as a motor vehicle dealer on the license expiration date. A renewal filed with the department within 45 days after the expiration date shall be accompanied by a delinquent fee of \$100. Thereafter, a new application is required, accompanied by the initial license fee. A license certificate duly issued by the department may be modified by endorsement to show a change in the name of the licensee, provided, as shown by affidavit of the licensee, the majority ownership interest of the licensee has not changed or the name of the person appearing as franchisee on the sales and service agreement has not changed. Modification of a license certificate to show any name change as herein provided shall not require initial licensure or reissuance of dealer tags; however, any dealer obtaining a name change shall transact all business in and be properly identified by that name. All documents relative to licensure shall reflect the new name. In the case of a franchise dealer, the name change shall be approved by the manufacturer, distributor, or importer. A licensee applying for a name change endorsement shall pay a fee of \$25 which fee shall apply to the change in the name of a main location and all additional locations licensed under the provisions of subsection (5). Each initial license application received by the department shall be accompanied by verification that, within the preceding 6 months, the applicant, or one or more of his or her designated employees, has attended a training and information seminar conducted by a licensed motor vehicle dealer training school. Any applicant for a new franchised motor vehicle dealer license who has held a valid franchised motor vehicle dealer license continuously for the past 2 years and who remains in good standing with the department is exempt from the prelicensing training requirement. Such seminar shall include, but is not limited to, statutory dealer requirements, which requirements include required bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and such other information that in the opinion of the department will promote good business practices. No seminar may exceed 8 hours in length.

(b) Each initial license application received by the department for licensure under subparagraph (1)(c)2. must be accompanied by verification that, within the preceding 6 months, the applicant (owner, partner, officer of the corporation, or director of the applicant, or a full-time employee of the applicant who holds a responsible management-level position) has successfully completed training conducted by a licensed motor vehicle dealer training

school. Such training must include training in titling and registration of motor vehicles, laws relating to unfair and deceptive trade practices, laws relating to financing with regard to buy-here, pay-here operations, and such other information that in the opinion of the department will promote good business practices. Successful completion of this training shall be determined by examination administered at the end of the course and attendance of no less than 90 percent of the total hours required by such school. Any applicant who had held a valid motor vehicle dealer's license within the past 2 years and who remains in good standing with the department is exempt from the requirements of this paragraph. ~~In the case of nonresident applicants, the requirement to attend such training shall be placed on any employee of the licensee who holds a responsible management-level position and who is employed full-time at the motor vehicle dealership.~~ The department shall have the authority to adopt any rule necessary for establishing the training curriculum; length of training, which shall not exceed 8 hours for required department topics and shall not exceed an additional 24 hours for topics related to other regulatory agencies' instructor qualifications; and any other requirements under this section. The curriculum for other subjects shall be approved by any and all other regulatory agencies having jurisdiction over specific subject matters; however, the overall administration of the licensing of these dealer schools and their instructors shall remain with the department. Such schools are authorized to charge a fee. This privatized method for training applicants for dealer licensing pursuant to subparagraph (1)(c)2. is a pilot program that shall be evaluated by the department after it has been in operation for a period of 2 years.

Section 2. Subsection (3) of section 320.60, Florida Statutes, is amended to read:

320.60 Definitions for ss. 320.61-320.70.—Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(3) “Demonstrator” means any new motor vehicle ~~that~~ which is carried on the records of the dealer as a demonstrator and is used by, being inspected or driven by the dealer or his or her employees, or driven by prospective customers for the purpose of demonstrating vehicle characteristics in the sale or display of motor vehicles sold by the dealer.

Section 3. Subsection (36) is added to section 320.64, Florida Statutes, to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(36)(a) Notwithstanding the terms of any franchise agreement, in addition to any other statutory or contractual rights of recovery after the voluntary or involuntary termination of a franchise, failing to pay the motor vehicle dealer, within 90 days after the effective date of the termination, cancellation, or nonrenewal, the following amounts:

1. The net cost paid by the dealer for each new car or truck in the dealer's inventory with mileage of 2,000 miles or less, or a motorcycle with mileage of 100 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer.

2. The current price charged for each new, unused, undamaged, or unsold part or accessory that:

a. Is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except that sheet metal may be in a comparable substitute for the original package; and

b. Was purchased by the dealer directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory.

3. The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the applicant or licensee or its representative which was purchased from or at the request of the applicant or licensee or its representative.

4. The fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer which:

a. Were recommended in writing by the applicant or licensee or its representative and designated as special tools and equipment;

b. Were purchased from or at the request of the applicant or licensee or its representative; and

c. Are in usable and good condition except for reasonable wear and tear.

5. The cost of transporting, handling, packing, storing, and loading any property subject to repurchase under this section.

(b) This subsection does not apply to a termination, cancellation, or nonrenewal that is implemented as a result of the sale of the assets or stock of the dealer. The dealer shall return the property listed in this subsection to the licensee within 90 days after the effective date of the termination, cancellation, or nonrenewal. The licensee shall supply the dealer with reasonable instructions regarding the method by which the dealer must return the property. The compensation for the property shall be paid by the licensee within 60 days after the tender of inventory and other items, if the dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer or distributor. If the inventory or other items are subject to a security interest, the licensee may make payment jointly to the dealer and the holder of the security interest.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 4. Subsections (1) and (5) of section 320.642, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

320.642 Dealer licenses in areas previously served; procedure.—

(1) Any licensee who proposes to establish an additional motor vehicle dealership or permit the relocation of an existing dealer to a location within a community or territory where the same line-make vehicle is presently represented by a franchised motor vehicle dealer or dealers shall give written notice of its intention ~~by certified mail~~ to the department. Such notice shall state:

(a) The specific location at which the additional or relocated motor vehicle dealership will be established.

(b) The date on or after which the licensee intends to be engaged in business with the additional or relocated motor vehicle dealer at the proposed location.

(c) The identity of all motor vehicle dealers who are franchised to sell the same line-make vehicle with licensed locations in the county or any contiguous county to the county where the additional or relocated motor vehicle dealer is proposed to be located.

(d) The names and addresses of the dealer-operator and principal investors in the proposed additional or relocated motor vehicle dealership.

Immediately upon receipt of such notice the department shall cause a notice to be published in the Florida Administrative Weekly. The published notice shall state that a petition or complaint by any dealer with standing to protest pursuant to subsection (3) must be filed not more than 30 days from the date of publication of the notice in the Florida Administrative Weekly. The published notice shall describe and identify the proposed dealership sought to be licensed, and the department shall cause a copy of the notice to be mailed to those dealers identified in the licensee's notice under paragraph (c).

(5)(a) The opening or reopening of the same or a successor motor vehicle dealer within 12 months ~~is shall not be~~ considered an additional motor vehicle dealer subject to protest within the meaning of this section, if:

1.(a) The opening or reopening is within the same or an adjacent county ~~and~~, is within 2 miles of the former motor vehicle dealer location;

2.(b) There is no dealer within 25 miles of the proposed location or the proposed location is further from each existing dealer of the same line-make

than the prior location is from each dealer of the same line-make within 25 miles of the new location;⁵

3.(e) The opening or reopening is within 6 miles of the prior location and, if any existing motor vehicle dealer of the same line-make is located within 15 miles of the former location, the proposed location is no closer to any existing dealer of the same line-make within 15 miles of the proposed location;⁵ or

4.(d) The opening or reopening is within 6 miles of the prior location and, if all existing motor vehicle dealers of the same line-make are beyond 15 miles of the former location, the proposed location is further than 15 miles from any existing motor vehicle dealer of the same line-make.

(b) Any other such opening or reopening shall constitute an additional motor vehicle dealer within the meaning of this section.

(c) If a motor vehicle dealer has been opened or reopened pursuant to this subsection, the licensee may not propose a motor vehicle dealer of the same line-make to be located within 4 miles of the previous location of such dealer for 2 years after the date the relocated dealership opens.

(7) Measurements of the distance between proposed or existing dealer locations required by this section shall be taken from the geometric centroid of the property that encompasses all of the existing or proposed motor vehicle dealer operations.

(8) The department shall not be obligated to determine the accuracy of any distance asserted by any party in a notice submitted to it. Any dispute concerning a distance measurement asserted by a party shall be resolved by a hearing conducted in accordance with ss. 120.569 and 120.57.

Section 5. This act shall take effect July 1, 2006.

Approved by the Governor June 12, 2006.

Filed in Office Secretary of State June 12, 2006.