

## 2011 Florida Statutes Dealer licenses in areas previously served

### 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 to the department. The notice must 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 and 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 the notice the department shall cause a notice to be published in the Florida Administrative Weekly. The published notice must state that a petition or complaint by any dealer with standing to protest pursuant to subsection (3) must be filed within 30 days following the date of publication of the notice in the Florida Administrative Weekly. The published notice must 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). The licensee shall pay a fee of \$75 and a service charge of \$2.50 for each publication. Proceeds from the fee and service charge shall be deposited into the Highway Safety Operating Trust Fund.

- (2)(a) **An application for a motor vehicle dealer license in any community or territory shall be denied when:**
1. **A timely protest is filed by a presently existing franchised motor vehicle dealer with standing to protest as defined in subsection (3); and**
  2. The licensee fails to show that the existing franchised dealer or dealers who register new motor vehicle retail sales or retail leases of the same line-make in the community or territory of the proposed dealership are not providing adequate representation of such line-make motor vehicles in such community or territory. The burden of proof in establishing inadequate representation shall be on the licensee.
- (b) In determining whether the existing franchised motor vehicle dealer or dealers are providing adequate representation in the community or territory**

**for the line-make, the department may consider evidence which may include, but is not limited to:**

1. The impact of the establishment of the proposed or relocated dealer on the consumers, public interest, existing dealers, and the licensee; provided, however, that financial impact may only be considered with respect to the protesting dealer or dealers.
  2. The size and permanency of investment reasonably made and reasonable obligations incurred by the existing dealer or dealers to perform their obligations under the dealer agreement.
  3. The reasonably expected market penetration of the line-make motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.
  4. Any actions by the licensees in denying its existing dealer or dealers of the same line-make the opportunity for reasonable growth, market expansion, or relocation, including the availability of line-make vehicles in keeping with the reasonable expectations of the licensee in providing an adequate number of dealers in the community or territory.
  5. Any attempts by the licensee to coerce the existing dealer or dealers into consenting to additional or relocated franchises of the same line-make in the community or territory.
  6. Distance, travel time, traffic patterns, and accessibility between the existing dealer or dealers of the same line-make and the location of the proposed additional or relocated dealer.
  7. Whether benefits to consumers will likely occur from the establishment or relocation of the dealership which cannot be obtained by other geographic or demographic changes or expected changes in the community or territory.
  8. Whether the protesting dealer or dealers are in substantial compliance with their dealer agreement.
  9. Whether there is adequate interbrand and intrabrand competition with respect to said line-make in the community or territory and adequately convenient consumer care for the motor vehicles of the line-make, including the adequacy of sales and service facilities.
  10. Whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipated future changes.
  11. The volume of registrations and service business transacted by the existing dealer or dealers of the same line-make in the relevant community or territory of the proposed dealership.
- (3) An existing franchised motor vehicle dealer or dealers shall have **standing to protest a proposed additional or relocated motor vehicle dealer** when the existing motor vehicle dealer or dealers have a franchise agreement for the same

line-make vehicle to be sold or serviced by the proposed additional or relocated motor vehicle dealer and are **physically located so as to meet or satisfy any of the following requirements or conditions:**

- (a) If the proposed additional or relocated motor vehicle dealer is to be located in a **county with a population of less than 300,000** according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:
1. The **proposed additional or relocated motor vehicle dealer is to be located in the area designated or described as the area of responsibility**, or such similarly designated area, including the entire area designated as a multiple-point area, in the franchise agreement or in any related document or commitment with the existing motor vehicle dealer or dealers of the same line-make as such agreement existed upon October 1, 1988;
  2. The existing motor vehicle dealer or dealers of the same line-make have a **licensed franchise location within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer**; or
  3. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, the dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; provided the existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.
- (b) **If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of more than 300,000** according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:
1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a **radius of 12.5 miles** of the location of the proposed additional or relocated motor vehicle dealer; or
  2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county

contiguous to the county where the additional or relocated dealer is proposed to be located.

(4) The department's decision to deny issuance of a license under this section shall remain in effect for a period of 12 months. The department shall not issue a license for the proposed additional or relocated motor vehicle dealer until a final decision by the department is rendered determining that the application for the motor vehicle dealer's license should be granted.

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

1. 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. 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;
3. 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; or
4. 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.

(6) When a proposed addition or relocation concerns a dealership that performs or is to **perform only service**, as defined in s. [320.60\(16\)](#), and will not or does not sell or lease new motor vehicles, as defined in s. [320.60\(15\)](#), the proposal shall be subject to notice and protest pursuant to the provisions of this section.

(a) Standing to protest the addition or relocation of a service-only dealership shall be limited to those instances in which the applicable mileage requirement established in subparagraphs (3)(a)2. and (3)(b)1. is met.

(b) The addition or relocation of a service-only dealership shall not be subject to protest if:

1. The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;
  2. There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and
  3. The proposed location of the additional or relocated service-only dealership is at least 7 miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.
- (c) In determining whether existing franchised motor vehicle dealers are providing adequate representations in the community or territory for the line-make in question in a protest of the proposed addition or relocation of a service-only dealership, the department may consider the elements set forth in paragraph (2)(b), provided:
1. With respect to subparagraph (2)(b)1., only the impact as it relates to service may be considered;
  2. Subparagraph (2)(b)3. shall not be considered;
  3. With respect to subparagraph (2)(b)9., only service facilities shall be considered; and
  4. With respect to subparagraph (2)(b)11., only the volume of service business transacted shall be considered.
- (d) If an application for a service-only dealership is granted, the department shall issue a license which permits only service, as defined in s. [320.60\(16\)](#), and does not permit the selling or leasing of new motor vehicles, as defined in s. [320.60\(15\)](#). If a service-only dealership subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions of this section shall apply.
- (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](#).

History.—s. 9, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 16, 17, ch. 80-217; ss. 2, 3, ch. 81-318; ss. 12, 20, 21, ch. 88-395; s. 4, ch. 91-429; s. 3, ch. 2003-269; s. 4, ch. 2006-183; s. 28, ch. 2009-71; s. 2, ch. 2009-93.