

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1037 CS

Franchised Motor Vehicle Dealers

SPONSOR(S): Russell

TIED BILLS:

IDEN./SIM. BILLS: SB 1814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	14 Y, 0 N, w/CS	Pugh	Miller
2) Civil Justice Committee	5 Y, 0 N	Kruse	Billmeier
3) State Infrastructure Council	5 Y, 2 N, w/CS	Pugh	Havlicak
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers, distributors, and importers, and regulates numerous components of franchise contracts they enter into to do business in the state of Florida.

HB 1037 w/CS makes a number of changes to this chapter, including:

- Requiring a licensed manufacturer, importer, or distributor to repurchase certain inventory and business-related equipment from franchised motor vehicle dealers whose franchises have been terminated. If the manufacturer, distributor, or importer fails to do this as specified, it faces sanctions from the state Department of Highway Safety and Motor Vehicles (DHSMV).
- Limiting DHSMV's geographic review of existing dealerships' market penetration and performance to other Florida dealers.
- Clarifying various definitions, measurement of geographic boundaries, and timing requirements related to administrative hearings.
- Making it more difficult for a licensed manufacturer to relocate an existing franchised dealership, and then open a new dealership at the old location without notice or the opportunity for other dealers to protest.
- Limiting a licensed manufacturer's ability to prohibit a franchised dealer from selling his or her dealership to a new owner who planned to relocate it.

HB 1037 w/CS raises no apparent constitutional or other legal issues. It has no fiscal impact on the state or local governments.

The bill has an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – HB 1037 w/CS creates additional obligations on automobile manufacturers regarding aspects of their agreements with franchised motor vehicle dealers in Florida.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers and regulates the franchise relationship between franchised dealers and the manufacturers. Section 320.605, F.S., states,

“It is the intent of the Legislature to protect the public health, safety, and welfare of citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.”

Section 320.27, F.S. defines “franchised 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 motor vehicles pursuant to an agreement as defined in s. 320.60(1).”

The requirements to obtain a state license and certification include:

- A full statement of the name and birth date of the person;
- The name of the firm or co-partnership, with the names and places of residence of all members thereof, if such applicant is a firm or co-partnership;
- The names and places of residence of the principal officers;
- The name of the state under whose laws the corporation is organized;
- The present and former place or places of residence of the applicant;
- The prior business in which the applicant has been engaged and the location thereof;
- The exact location of the place of business and whether the place of business is owned by the applicant, when acquired, or, if leased, a true copy of the lease shall be attached to the application;
- A certification that the location provides an adequately equipped office and is not a residence;
- Documentation that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale;
- That the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which will be available at all reasonable hours to inspection by the department or any of its inspectors or other employees;
- A certification that the business of a motor vehicle dealer is the principal business which shall be conducted at that location;
- A statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer; and
- Other relevant information as may be required by DHSMV.¹

Based on 2003-2004 DHSMV records, the state has 12,626 licensed motor vehicle dealers and 355 licensed vehicle manufacturers. According to the DHSMV, the state has 1,497 franchised automobile dealers.

¹ Section 320.27(3), F.S.

The core of the requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers is contained within ss. 320.60 - 320.071, F.S. These sections of law specify:

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a vehicle manufacturer's license;
- The process, timing, and notice requirements for licensed manufacturers wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a licensed manufacturer must follow if it wants to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- The circumstances under which a licensed manufacturer, distributor, or importer may temporarily operate as a licensed vehicle dealer;
- Amounts of damages and fines that can be assessed against licensed manufacturers in violation of statutes;
- The ability of licensed vehicle dealers to seek administrative hearings; and
- DHSMV's authority to promulgate rules to implement these sections of law.

Effect of Proposed Changes

HB 1037 w/CS makes a number of changes to existing statutes regulating automobile franchisees in this state. The general impact of the bill is to raise the current level of protection for franchised motor vehicle dealers.

The bill:

- Amends s. 320.64, F.S., to create a 36th cause for a licensed manufacturer, importer, or distributor to have its license denied, suspended, or revoked by DHSMV – failing to perform the obligation of repurchasing certain vehicles and other property of a dealer upon the voluntary or involuntary termination of the dealer franchise. In such cases, licensed manufacturers would be required to buy-back, at net cost, new vehicles with a mileage of 6,000 miles or less, with a mileage allowance for all miles over 1,000; repay the cost of new, unused, undamaged, and unsold parts and accessories in their original packaging; pay fair market value for signs, tools, and other equipment that meet certain conditions; and pay the costs related to packing, storing, and shipping these items eligible for repurchase. The dealer has 90 days to return the property to the manufacturer, who has 60 days upon receipt of the items to pay the dealer. These repurchase provisions do not apply in cases where the dealer's franchise is being terminated as a result of dealer selling his or her assets or stock.
- Amends s. 320.642(2), F.S., to specify that DHSMV, when considering a manufacturer's or importer's proposal to add a new dealership in an area because the existing dealership is not meeting required performance standards, shall not use out-of-state dealership comparisons.
- Amends s. 320.642(3), F.S., to clarify the timing requirements for franchised dealers to have standing to protest proposed new dealerships. Also, it specifies that at least 25 percent of their sales or leases must be to persons or entities that live within a certain radius of the so-called "geometric centroid" of the dealership.² "Geometric centroid" is a complex mathematical term that roughly means the center point of, in this case, the dealership's property.
- Amends s. 320.642(5), F.S., to make it more difficult for a licensed manufacturer to relocate an existing franchised dealership, and then open a new dealership at the old location without notice or the opportunity for other dealers to protest. The bill requires the manufacturer to meet some timing and dealership distance requirements, and specifies that the manufacturer cannot open a new dealership for two years if it is within 4 miles of the old site.
- Creates s. 320.642(7), F.S., to require that all measurements required for the purposes of determining the locations of existing, relocated, and proposed new dealerships be based on the "geometric centroid."

² The radius is 20 miles for counties with a population less than 300,000 and 12.5 miles for counties with a population of more than 300,000.

- Amends s. 320.643, F.S., to limit a licensed manufacturer's ability to prohibit a franchised dealer from selling his or her dealership to a new owner who planned to relocate it. Current law addresses the process for franchise transfers, but not transfers and subsequent relocation. The bill specifies that a sale-and-relocation would not be subject to the terms of the existing franchise agreement under certain circumstances.

The bill also expands the definition of "demonstrator" vehicles to allow the immediate family members of dealers, their employees, or officers to drive them, and cross-references the definition to another section of law related to vehicle registration and dealer license plates. It also defines "existing franchised motor vehicle dealer" for the purposes of ss. 320.61-320.70, F.S., to add persons or entities who are awaiting a final order approving the establishment of their dealership, or who are in the application process for a final order.

Additionally, the bill gives franchised dealers facing termination of their agreements with manufacturers because of questions about their sales performance 180 days to cure the deficiencies, before the manufacturers can file a notice of default. For all other legal reasons a manufacturer might want to terminate a franchise agreement, the franchised dealer continues to have a 90-day notice period.

Finally, the bill extends the time-frame for administrative hearings for cases involving dealership terminations from what is currently allowed for cases involving new dealership locations. Such hearings would be set no sooner than 180 days and no later than 240 days.

The bill takes effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Amends s. 320.13, F.S., to add a cross-reference to a definition of demonstrator.

Section 2: Amends s. 320.60, F.S., to amend the definition for "demonstrator" and add a definition for "existing franchised motor vehicle dealer."

Section 3: Amends s. 320.64, F.S., to specify the types of costs owed to a motor vehicle dealer whose contract has been terminated by a manufacturer.

Section 4: Amends s. 320.641, F.S., to require licensed manufacturers to give franchised dealers 180 days to respond to allegations that they are deficient in meeting sales performance obligations and to correct such deficiencies.

Section 5: Amends s. 320.642, F.S., to add requirements related to determining the geographic service areas of dealerships and dealer performance.

Section 6: Amends s. 320.643, F.S., to address instances where a dealer sells his or her franchise to a new owner who wants to relocate it.

Section 7: Amends s. 320.699, F.S., to specify deadlines for scheduling administrative hearings.

Section 8: Provides this act shall take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. To the extent HB 1037 w/CS protects the rights of existing franchised motor vehicle dealers in cases involving the establishment of new dealerships in a service area, buy-backs of certain inventory and equipment upon franchise termination, and the fate of new ownerships involving transfer, the bill may benefit franchised motor vehicle dealers. These same law changes likely will create financial costs for licensed manufacturers, distributors, and importers. It is unclear whether the bill's provisions will impact the ability of persons to become licensed and franchised motor vehicle dealers in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1037 w/CS because the bill does not require counties or municipalities to expend or raise local funds, nor does it reduce the percentage of state tax revenues shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

DHSMV has sufficient rulemaking authority to implement the provisions of HB 1037 w/CS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 1037 w/CS is supported by the Florida Automobile Dealers Association.

The Alliance of Automobile Manufacturers, which worked with the dealers association on several issues in the bill, opposes two of the bill's provisions: redefining the geographic comparison area so that it cannot include any area outside of Florida, and the changes related to franchisees selling their dealerships to persons who want to relocate the business.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

On March 22, 2005, the House Transportation Committee adopted a Proposed Committee Substitute (PCS) to HB 1037. The key differences between the bill as filed and the PCS related to placement of proposed changes in statute. Other changes were as follows:

- The PCS expands the definition of “demonstrator” vehicle to include use by immediate family members of the dealership owner or employees, and cross-references the expanded definition to another section in chapter 320, F.S.;
- The PCS has a more expansive definition of “existing franchised motor vehicle dealer,” regarding protest rights of persons who are awaiting the disposition of a final order allowing them to open a dealership.
- The PCS addresses the circumstances under which a manufacturer, distributor, or importer would be required to buy back inventory and other equipment from dealers who were leaving the business.
- The PCS lists more factors to be taken into account when determining whether a manufacturer, importer, or distributor can prevent a relocation of a franchised dealership.

The committee reported the PCS favorably as a committee substitute.

State Infrastructure Council

At its April 21, 2005, meeting, the Council adopted without objection four amendments:

- Amendment #1 removed independent contractors from the definition of persons who can use a dealer’s demonstration vehicles.
- Amendments #2 and # 3 removed references to a dealer’s market penetration being measured with respect to the community or territory as a whole, and not any portion therein, and to eliminate the requirement that any geographic comparison area of a dealer’s performance can’t be smaller than an entire county.
- Amendment #4 added to the definition of “existing franchised motor vehicle dealer” those persons who are in the application process for a final order granting them motor vehicle dealer franchises.

The Council then voted 5-2 in favor of the bill, and reported it with a CS.