

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1037 W/CS

Franchised Motor Vehicle Dealers

**SPONSOR(S):** Russell

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1814

---

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

---

### SUMMARY ANALYSIS

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

HB 1037 w/CS makes a number of changes to these laws dealing with franchised motor vehicle dealers. The changes include:

- 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).
- Allowing DHSMV to deny an application for a new dealer license if the applicant fails to show that existing franchised dealer or dealers of the same line and make of vehicles are not achieving adequate sales targets in the community or territory as whole – not just in some portion of the area. In making that determination, DHSMV is further directed to consider a geographic comparison area that is not smaller than a county, and does not include any area outside the state of Florida.
- 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 would take effect July 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1037.TR.doc

**DATE:** 3/28/2005

## 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 licensing, maintaining competition, providing consumer protection and fair trade, and providing minorities with opportunities for full participation as motor vehicle dealers.”

Vehicle dealer requirements are scattered throughout chapter 320, F.S.; for example, s. 320.27, F.S. defines “franchised motor vehicle dealer” and lists the requirements to obtain a state license and certification, and specifies the revocation process. Based on 2003-2004 DHSMV records, Florida has 12,626 licensed motor vehicle dealers and 355 licensed vehicle manufacturers. According to the DHSMV, Florida has 1,497 franchised automobile dealers.

But the core of the requirements regulating the business relationships 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.

Periodically, the franchised motor vehicle dealers and the licensed manufacturers ask the Legislature for changes to the law to address issues arising out of court cases or market trends.

##### Effect of Proposed Changes

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

Key provisions in the bill are:

- Amends s. 320.64, F.S., to create a 36<sup>th</sup> 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 shall deny an application for a new dealer license if the applicant fails to show that existing franchised dealer or dealers of the same line and make of vehicles are not achieving adequate sales targets in the community or territory as whole. In making that determination, DHSMV is further directed to consider a geographic comparison area that is not smaller than a county, and does not include any area outside the state of Florida.
- Amends s. 320.64(3), F.S., clarifies 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 who live within a 20-mile radius of the so-called "geometric centroid" of the dealership. "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 can't 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."
- 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. HB 1037 w/CS would specify that a sale-and-relocation would not be subject to the terms of the existing franchise agreement under certain circumstances.

HB 1037 w/CS also expands the definition of "demonstrator" vehicles to allow the immediate family members of dealers, their employees, or officers to drive them, 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.

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 same time-frame for administrative hearings for cases involving dealership terminations as 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.

**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 is financially beneficial. These same law changes likely will create financial costs for licensed manufacturers, distributors, and importers, however. It is unclear whether the bill's provisions negatively 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 legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

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 three of the bill's provisions:

- The redefining of the geographic comparison area so that it can not be smaller than a county and cannot include any area outside of Florida.
- The requirement that performance comparison must be made in the community or territory as a whole, and some portion of it.
- The changes related to franchisees selling their dealerships to persons who want to relocate the business.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

At its March 22, 2005, meeting, the House Transportation Committee considered and adopted without objection 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:

-- The original bill did not expand the definition of "demonstrator" vehicle to include use by immediate family members of the dealership owner or employees, nor did it cross-reference the expanded definition to another section in chapter 320, F.S.;

-- The original bill had a less-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 original bill did not address the circumstances under which a manufacturer, distributor, or importer wouldn't be required to buy back inventory and other equipment from dealers who were getting out of the business.

-- The original bill listed fewer factors to be taken into account when determining whether a manufacturer, importer, or distributor can prevent a relocation of a franchised dealership.

The PCS also include a number of clarifying and technical changes related to the original bill's wording and structure.

After discussion, the committee voted 14-0 to report the bill as favorable with a committee substitute.