

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Transportation Committee

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BILL: CS/SB 1814

SPONSOR: Transportation Committee and Senator Baker

SUBJECT: Franchised Motor Vehicle Dealers

DATE: April 7, 2005

REVISED: 4/12/05

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u></u>	<u></u>	<u>CM</u>	<u></u>
3.	<u></u>	<u></u>	<u>RI</u>	<u></u>
4.	<u></u>	<u></u>	<u>JU</u>	<u></u>
5.	<u></u>	<u></u>	<u>GA</u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

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## I. Summary:

The Committee Substitute (CS) for Senate Bill 1814 makes a number of changes to Chapter 320, F.S., which provides for the licensing of automobile dealers and automobile manufacturers, distributors, and importers, and regulates numerous components of franchise contracts. The CS:

- Expands the definition of “demonstrator” vehicle and adds a definition for “existing franchised motor vehicle dealer.”
- Requires a licensed manufacturer, importer, or distributor to repurchase certain inventory and franchise-specific equipment from franchised motor vehicle dealers whose franchises have been terminated.
- Allows the Department of Highway Safety and Motor Vehicles (DHSMV) to deny an application for a new dealer license if the applicant fails to show existing franchised 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.
- Clarifies various definitions, measurement of geographic boundaries, and schedule requirements related to evidence used in administrative hearings determining whether a franchise is providing adequate representation in the community.
- Makes 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.
- Limits 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.

This bill substantially amends sections 320.13, 320.60, 320.64, 320.641, 320.642, 320.643, and 320.699 of the Florida Statutes.

## II. Present Situation:

The DHSMV estimates Florida has 12,531 licensed motor vehicle dealers, 1,522 of which are franchised motor vehicle dealers from one or more of the estimated 366 motor vehicle manufacturers licensed in the state. Section 320.605, F.S., establishes the Legislature's intent to regulate the licensing of dealers and manufacturers, maintain competition, protect consumers and fair trade, and provide for minority participation as dealers. A critical component of the state's effort to fulfill this intent is the regulation of the contractual relationship between the manufacturer and dealer. Sections 320.60 – 320.71, F.S., specify:

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a vehicle manufacturer's license;
- The process, schedule, 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 to add a dealership in an area already served by a franchised dealer, the process a franchised dealer must use in protesting the manufacturer's actions, 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.

Definition of a market area is fundamental to the concept of a franchise. However, differing demographics and population densities may render a one-size-fits-all definition inadequate. Predetermined market areas can quickly become outdated or otherwise insufficient due to population growth or shift. Rather than relying on a statutorily established geographic unit (e.g., a 10-mile radius), DHSMV and the Department of Administrative Hearings (DOAH) assess protested market areas on a case-by-case basis, choosing the standards to be used when determining market penetration and representation based on the characteristic of each individual community or territory.

## III. Effect of Proposed Changes:

Generally, the bill limits the ability of licensees (*i.e.*, a manufacturer, factory branch, distributor, or importer) to open new franchises and protects existing dealers (franchises) geographic markets from intrusion by similar vehicle line-makes. The bill provides for the protection of dealers' franchise-specific costs in the event a franchise agreement is terminated or not renewed. The bill enhances dealers' ability to sell a franchise when the buyer intends to relocate the dealership.

**Section 1:** Amends s. 320.13, F.S., adding a reference to a section modified as a result of this CS.

**Section 2:** Amends s. 320.60, F.S., expanding the definition of “demonstrator” to include new vehicles owned by a dealer that are driven or operated by family members of the dealer or employees of the dealership and to include independent contractors of the dealership. An “Existing franchised motor vehicle dealer” is defined to include those franchisees who have not yet opened for business, expanding the number of dealers who may have standing to protest a licensee attempt to open a new franchise.

**Section 3:** Amends s. 320.64, F.S., which lists the acts a licensee is prohibited from committing. A new prohibition is added forbidding a licensee from not paying a motor vehicle dealer for unused stock when a franchise agreement is terminated. In other words, the section requires licensees to buy back a terminated franchise’s inventory of new vehicles, parts and accessories, signs bearing the licensee’s trademark, and certain specialized tools and equipment, in the event a franchise agreement is terminated. The inventory must be returned to the licensee within 90 days of the termination, cancellation, or nonrenewal. Payment from the licensee must be received within 60 days of the return. Failure to do so may result in sanctions against the manufacturer’s license.

**Section 4:** Amends s. 320.641, F.S., establishing a 180 day period for franchised dealers to respond to claims from a licensee regarding the dealers’ sales performance obligations and take corrective actions.

**Section 5:** Amends s. 320.642, F.S., clarifying the burden of proof a licensee must provide when applying for a new franchise in an area already served by an existing franchise. Specifically, market penetration for a given line-make must be compared at specific geographic units no smaller than an entire county and only for areas within the state of Florida. The licensee must identify the geographic unit and must include information on import penetration and interbrand competition. Geographic units are clarified for purposes of determining an existing franchise’s standing to protest a licensee’s proposed new dealership. This allows DHSMV to deny an application for a new dealer license if the applicant fails to show existing franchised 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. If a licensee opens a new dealership which is not open to protest under the terms of the subsection, the licensee may not propose additional dealerships within four miles of the previous dealership for two years.

**Section 6:** A new subsection is added to s. 320.643, F.S., providing exemption from the location requirements of the franchise agreement for dealerships transferring and relocating a franchise if: a) the relocation is exempt from protest under the provisions of s. 320.342, F.S., and b) the proposed facility meets the requirements of the franchise agreement.

**Section 7:** Amends s. 320.699, F.S., adding a new section (3) establishing time limits for administrative hearings for complaints filed as a result of the provisions of ss. 320.641, 320.643, 320.644, or 320.696, F.S.

**Section 8:** Establishes an effective date of July 1, 2005.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Consumers may be impacted by the bill's restraints on manufacturers' ability to open additional franchises.

## C. Government Sector Impact:

The revision to s. 320.642(2)(b), F.S., from "may" to "shall", requires the DHSMV and DOAH to consider all the factors listed resulting in indeterminate, though marginal costs to both agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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