

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1077 CS                      Motor Vehicle Dealers  
**SPONSOR(S):** Russell  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** CS/SB 2682 (i)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>13 Y, 0 N, w/CS</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Civil Justice Committee</u>	<u>6 Y, 0 N</u>	<u>Blalock</u>	<u>Bond</u>
3) <u>State Infrastructure Council</u>	<u>9 Y, 0 N</u>	<u>Pugh</u>	<u>Havlicak</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

A manufacturer, distributor, or importer of motor vehicles must have a license in order to conduct business in Florida. Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. A franchised motor vehicle dealer is any person who engages in the business of repairing, servicing, buying, selling, or dealing in motor vehicles pursuant to an agreement between a manufacturer, distributor, or importer, and a franchised motor vehicle dealer:

HB 1077 CS provides that a franchised motor vehicle dealer that has been licensed continuously for 2 years and is in good standing with the Department of Highway Safety and Motor Vehicles is exempt from the pre-licensing training requirement when seeking a new franchised motor vehicle dealer license.

The bill also revises the following provisions pertaining to the contractual relationship between a "licensee" (manufacturers, distributors, or importers) and a franchised motor vehicle dealer:

- Requires a licensee to repurchase certain inventory and business-related equipment from franchised motor vehicle dealers whose franchises have been terminated, and provides for sanctions if these provisions are not followed.
- Specifies new requirements for a licensed manufacturer to open or reopen a dealership without being subject to protest by motor vehicle dealers.
- Limits a licensed manufacturer's ability to prohibit a franchised dealer from selling his or her dealership to a new owner who plans to relocate it, if certain requirements are followed.
- Revises the definition of "demonstrator" vehicle.
- Provides for the measurement of geographic boundaries.

HB 1077 CS does not appear to raise any constitutional or other legal issues. Nor does the bill appear to have a fiscal impact on state or local governments.

HB 1077 CS takes effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: HB 1077 CS creates additional requirements and obligations for automobile manufacturers regarding aspects of their agreements with franchised motor vehicle dealers in Florida.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present 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 a "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)." Section 320.27(4), F.S., provides the requirements that must be met in order for a franchised motor vehicle dealer to receive a license certificate, which must be renewed every 2 years.

Section 320.642, F.S., provides that a dealer who seeks to establish another motor vehicle dealership or relocate a dealership to a location within a community where the same line-make vehicle is presently represented must give written notice by certified mail to the Department of Highway Safety and Motor Vehicles (DHSMV).

Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. The requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers are primarily in 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.

During the 2005 legislative session, Florida franchised motor vehicle dealers supported legislation to amend current statutes to address several issues arising from court decisions that they said had the potential to negatively impact their ability to remain competitive. The legislation was unsuccessful.

### **Effect of Proposed Changes**

HB 1077 CS amends s. 320.27(4), F.S., to provide that a franchised motor vehicle dealer that has been licensed continuously for 2 years and is in good standing with the Department of Highway Safety and Motor Vehicles is exempt from the pre-licensing training requirement when seeking a new franchise motor vehicle dealer license.

The bill amends s. 320.60(3), F.S., to clarify the existing definition of "demonstrator" by specifying that new vehicles which have been "driven" by prospective customers qualify as demonstrators.

Additionally, the bill amends s. 320.64, F.S., to create a new cause for a licensee to have its license denied, suspended, or revoked by DHSMV. A licensee can have its license denied, suspended, or revoked by DHSMV for failing to repurchase, within a specific time frame, certain vehicles and other property from a dealer upon the voluntary or involuntary termination of that dealer's franchise.

Specifically, licensed manufacturers would be required to:

- Buy back, at net cost, new vehicles with a mileage of 2,000 miles or less, not counting the mileage placed on the vehicle before it was delivered to the dealer;
- Repay the cost of new, unused, undamaged, and unsold parts and accessories in their original packaging and in unbroken lots, with exceptions for sheet metal;
- Pay fair market value for signs, special tools, and other equipment that meet certain conditions; and
- Pay the costs related to packing, storing, loading and shipping these items eligible for repurchase.

The dealer would have 90 days to return the property to the manufacturer, who would have 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.

HB 1077 CS amends s. 320.642(5), F.S., to make it more difficult for a licensee 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 provides that the opening or reopening of the same or successor motor vehicle dealer within 12 months will not be considered an additional motor vehicle dealer subject to protest if:

- There is no motor vehicle dealer within 25 miles of the proposed location; or
- The opening or reopening is within 6 miles of the prior location and, if an existing dealer of the same line-make is located within 15 miles of the former location, the proposed location is not closer to an existing dealer of the same line-make "within 15 miles of the proposed location."

This bill also specifies that if the opening or reopening is not considered an additional motor vehicle dealer, then the manufacturer cannot open a new dealership for 2 years if it is within 4 miles of the old site.

This bill creates s. 320.642(7), F.S., to require that all measurements required for the purposes of determining the locations of existing and proposed new dealerships be based on the "geometric centroid." "Geometric centroid" is a mathematical term that basically means the center point of, in this case, the dealership's property. It also creates s. 320.642(8), F.S., to provide that DHSMV is not obligated to determine the accuracy of any distance asserted by any party in a notice submitted to it. Any dispute concerning a distance measurement must be resolved by a hearing conducted in accordance with the Administrative Procedures Act, Chapter 120, F.S.

Finally, the bill also amends s. 320.642(1), F.S., to remove the requirement that notice must be sent to DHSMV by "certified mail".

C. SECTION DIRECTORY:

Section 1: Amends s. 320.27, F.S., to provide that under certain circumstances a motor vehicle dealer is exempt from the pre-licensing training requirement when seeking to renew a certification license.

Section 2: Amends s. 320.60, F.S., to amend the definition of "demonstrator."

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. 320.642, F.S., to amend criteria determining when a proposed opening or reopening of a motor vehicle dealership is subject to protest.

Section 5: Provides an effective date of July 1, 2006.

**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:

HB 1077 CS amends s. 320.642, F.S., by removing a provision requiring licensees to give certain notices to DHSMV by certified mail. The cost of certified mail according to the USPS is \$2.40 in addition to postage. Therefore, this bill will save licensees that must give notice under s. 360.642(1), F.S., \$2.40 per mailing.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 1077 CS does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

At its March 14, 2006, meeting, the House Transportation Committee adopted a strike-all amendment to conform to the Senate companion. The amendment made the following revisions to the original bill:

- It amended s. 320.27, F.S., to delete the requirement that applicants for new franchised dealer licenses attend training seminars if they have held an existing license continuously for the past two years and are in good standing with the DHSMV.
- It amended s. 320.642, F.S., to specify that the DHSMV is not obligated to check the accuracy of the measurements in the applications, and that any dispute about distance measurements in an application shall be resolved by an administrative hearing in accordance with ss. 120.569 and 120.57, F.S.
- It deleted the proposed changes to s. 320.643, F.S., related to criteria and circumstances in which a licensed manufacturer can prohibit a franchised dealer from selling his or her dealership to a new owner who plans to relocate it.

The bill was then reported favorably with a committee substitute.