The Florida Senate

PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Commerce Committee

BILL: CS/SB 1722

INTRODUCER: Transportation Committee and Senator Baker

SUBJECT: Motor Vehicle Dealers

DATE: April 12, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	**Fav/CS**
2.	Pugh	Cooper	CM	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

Sections 320.61-320.70, F.S., provide for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and regulate numerous aspects of the franchise contracts these businesses enter into to conduct business in the state of Florida.

CS/SB 1722 makes the following changes to three components of franchise agreements:

- Elaborates on the current process by which a motor vehicle manufacturer, distributor, or importer can charge back costs to a motor vehicle dealer if an audit raises questions about the costs' validity.
- Adds a provision prohibiting a motor vehicle manufacturer from refusing, limiting, or restricting a dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles to the same or expanded facility, unless the manufacturer is able to prove its decision is justified because of space or financial requirements and the dealer's performance with the existing line-make.
- Requires a manufacturer to give a dealer 180 days to address problems related to sales or service performance obligations before sending a notice discontinuation, cancellation, or nonrenewal of the franchise agreement.

CS/SB 1722 substantially amends ss. 320.64 and 320.641 of the Florida Statutes.

II. Present Situation:

Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles (or "line-make") which they manufacture, distribute, or import. The requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers are found primarily in ss. 320.60-320.071, F.S. These sections of law specify:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (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.

For example, each franchised motor vehicle dealer maintains an "open account" with the manufacturer with which it has entered into a franchise agreement. The purpose of the open account is to facilitate billing and accounting between the parties, such as for warranty work on customers' vehicles. The account is a running series of debits and credits for purchases, rebates, and reimbursements, between the manufacturer and the dealer.

Section 320.64, F.S., outlines the causes for the DHSMV to deny, suspend, or revoke the license of a licensed manufacturer, importer, or distributor of motor vehicles.

Section 320.641, F.S., outlines the procedure a motor vehicle manufacturer must follow when discontinuing, canceling, modifying, or replacing franchise agreements. The manufacturer is required to provide written notice to the motor vehicle dealer at least 90 days before the effective date of the action, along with the specific grounds for such action. Any dealer who receives such a notice may file a petition or complaint for a determination of whether the action is unfair or prohibited.

According to s. 320.641(3), F.S., a discontinuation, cancellation, or non-renewal of a franchise agreement is considered unfair if:

- It is not clearly permitted by the franchise agreement;
- It is not undertaken in good faith;
- It is not undertaken for good cause;

- It is based on an alleged breach of the franchise agreement which is not in fact a material or substantial breach; or
- The grounds relied upon for termination, cancellation, or non-renewal have not been applied in a uniform and consistent manner by the licensee.

A modification or replacement of a franchise agreement is considered unfair if:

- It is not clearly permitted by the franchise agreement;
- It is not undertaken in good faith; or
- It is not undertaken for good cause.

The motor vehicle manufacturer has the burden of proof that such action is fair and not prohibited.

A motor vehicle dealer who can demonstrate a violation of, or failure to comply with, any of the provisions found in these sections will or can adversely and pecuniarily affect the dealer is entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697, F.S.

Section 320.695, F.S., allows for the grant of a temporary or permanent injunction by any circuit court of the state. Section 320.697, F.S., allows for recovery in circuit court of damages in the amount equal to three times the pecuniary loss, together with costs and attorney's fees.

III. Effect of Proposed Changes:

The general impact of CS/SB 1722 is to raise the level of protection for franchised motor vehicle dealers in three different aspects of their businesses.

To address the issue of manufacturer charge-backs of warranty or incentive payment costs, Section 1 of CS/SB 1722 amends s. 320.64(25), F.S., by:

- Specifying that a motor vehicle manufacturer may not charge back to a motor vehicle dealer extra costs subsequent to the payment of a warranty or incentive claim unless a representative of the manufacturer has met in person, by telephone, or by video teleconference with a representative of the dealer.
- Requiring the manufacturer at such a meeting to provide a detailed explanation, with supporting documentation, on the basis for each of the claims for which the manufacturer proposes to charge back the dealer, and a written statement containing the basis upon which the motor vehicle dealer was selected for audit or review. The dealer is given a reasonable period of time, commensurate with the volume of claims being considered, but not less than 45 days after the meeting, to respond to the proposed charge-backs.
- Prohibiting the manufacturer from changing or altering the basis for each of the proposed charge-backs as presented to the dealer following the conclusion of the audit, unless the manufacturer received new information affecting the basis for one or more charge-backs.
- Specifying that if a manufacturer changes the basis for a proposed charge-back based on new information, the motor vehicle dealer must be given the same right to a meeting and right to respond as when the charge-back was originally presented. No provision in

Florida law currently requires manufacturers to permit a dealer to respond to alleged improper claims.

The CS adds a subsection to s. 320.64, F.S., prohibiting a motor vehicle manufacturer from limiting, restricting, or refusing to allow a dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles to his facility, unless the manufacturer is able to prove its decision is justified after consideration of:

- Reasonable facility and financial requirements associated with adding the new line-make, and
- The dealer's performance with the existing line-make.

This prohibition would be enforced notwithstanding the terms of any franchise agreement to the contrary.

Section 2 amends s. 320.641(3), F.S., to clarify that a new motor vehicle dealer must be given at least 180 days to correct an alleged failure related to sales or service performance before a manufacturer may send out a notice of discontinuation, cancellation, or nonrenewal of the franchise agreement.

As provided in current law, affected motor vehicle dealers could pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697, F.S., -- including treble damages against the manufacturer -- when a manufacturer fails to comply with or violates these new provisions.

Section 3 of the bill provides an effective date of July 1, 2007.

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:

Indeterminate. To the extent CS/SB 1722 protects the rights of existing franchised motor vehicle dealers in cases involving the ability to receive a charge-back from a manufacturer, the establishment of an additional sales or service operation for another line-make of motor vehicles at the same or expanded facility, and the amount of time allowed to cure an alleged breach of a franchise agreement, the CS may benefit franchised motor vehicle dealers. These same law changes may create financial costs for licensed manufacturers, distributors, and importers.

C. Government Sector Impact:

There is no government fiscal impact. DHSMV already regulates this industry, so the additional grounds in the bill for regulatory actions should result in no additional state impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Automobile Dealers Association (association) claims a manufacturer's audit of a dealer can result in hundreds of allegedly improper claims resulting in charge-backs of greater than $100,000.

The association also claims manufacturers have increasingly begun to require dealers to provide exclusive facilities for sales and service of the manufacturer's vehicles, even though the product may suffer a significant downturn in popularity in later years. One example provided was of the Volkswagen brand, which saw a resurgence in the late 1990s, but within 2 years saw sales decrease dramatically. This left dealers with large facilities, but no vehicles to fill the showroom and service bays.

Finally, the association states, under current law, the dealer is not given the chance to take corrective action prior to being subject to termination and the potential loss of revenue. The purpose of the language in CS/SB 1722, they claim, is to provide dealers with an opportunity to demonstrate that any deficiencies in sales or service performance have been corrected prior to the institution of formal termination proceedings.

The Alliance of Automobile Manufacturers responds that a provision in the CS requiring manufacturers to demonstrate certain conditions before refusing, restricting, or limiting a dealer from acquiring or adding sales and service operations of a different line-make of motor vehicle "notwithstanding the terms of any franchise agreement" could be construed as impairment of contract.

VIII. Summary of Amendments:

None.