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: Transportation Committee

BILL:	CS/SB 1722
INTRODUCER:	Transportation Committee and Senator Baker
SUBJECT:	Motor Vehicle Dealers
DATE:	March 19, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	**Fav/CS**
2.			CM	
3.				
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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 also regulates numerous components of the franchise contracts they enter into to do business in the state of Florida.

SB 1722 makes a number of changes to these sections, including:

- Requiring the motor vehicle manufacturer to meet in person, by telephone, or by video teleconference with the dealership the manufacturer is charging back subsequent to an audit for warranty or incentive payments.
- Requiring the manufacturer at such meeting to have provided a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the manufacturer proposed to chargeback 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 motor vehicle dealer following the conclusion of the audit, unless the manufacturer received new information affecting the basis for one or more charge-backs.
- Providing 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.

- Adding a provision prohibiting a motor vehicle manufacturer from refusing to allow, 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 the refusal, limitation, or restriction is justified by consideration of reasonable facility and financial requirements and the dealer's performance for the existing line-make.
- Requiring a manufacturer to provide a cure period before ending a franchise agreement. Specifically, if the notice of discontinuation, cancellation, or nonrenewal relates to an alleged failure of the motor vehicle dealer's sales or service performance obligations, the motor vehicle dealer must first be provided 180 days to correct the alleged failure before a manufacturer may send the notice.

The bill has no fiscal impact on state and local governments and is effective July 1, 2007.

This bill 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 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 thru 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.

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, non-renewing, 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 the bill is to raise the level of protection for franchised motor vehicle dealers.

The bill:
Amends s. 320.64(25), F.S., by:

- Specifying the motor vehicle manufacturer may not charge a motor vehicle dealer back 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 meeting to have provided a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the manufacturer proposed to chargeback 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.
- Providing 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.
    - 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 parties. The account is a running series of debits and credits for purchases, rebates, reimbursements, etc., between the manufacturer and the dealer.
    - No provision in Florida Statute currently requires manufacturers to permit a dealer to respond to alleged improper claims.

Creates s. 320.64(37), F.S., which prohibits the motor vehicle manufacturer from refusing to allow, 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 the refusal, limitation, or restriction is justified by consideration of reasonable facility and financial requirements and the dealer's performance for the existing line-make.

Amends s. 320.641(3), F.S. by clarifying a new motor vehicle dealer must first be provided with at least 180 days to correct the alleged failure before a manufacturer may send the notice of discontinuation, cancellation, or nonrenewal only if the notice relates to an alleged failure of the new motor vehicle dealer's sales or service performance obligations under 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., when a manufacturer fails to comply with or violates these new provisions.

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 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 bill 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. The 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 two 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 SB 1722, they claim, is to provide dealers with an opportunity to demonstrate a dealer's deficiencies in performance have been corrected prior to the institution of formal termination proceedings.

VIII. Summary of Amendments:

None.