

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 815

Motor Vehicle Dealers

SPONSOR(S): McKeel

TIED BILLS:

IDEN./SIM. BILLS: SB 1722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>9 Y, 0 N</u>	<u>Owen</u>	<u>Miller</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Owen</u>	<u>Tinker</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 320, F.S., provides 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.

CS/HB 815 makes a number of changes to this chapter, including:

- Requiring the motor vehicle manufacturer to meet in person, by telephone, or by videoconference with the dealership they are charging back subsequent to an audit for warranty or incentive payments.
- Providing the motor vehicle dealer a period of not less than 45 days after the meeting with the manufacturer to respond to the proposed charge-backs.
- Prohibiting the motor vehicle 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 motor vehicle manufacturer received new information affecting the charge-backs. In that case, the motor vehicle dealer is given the same right to a meeting and response as they were with the original claim.
- Requiring the motor vehicle manufacturer to provide a detailed explanation of each charge-back, supporting documentation for each charge-back, and the basis or methodology for which the motor vehicle dealer was selected for the audit or review.
- Adding a provision that prohibits a motor vehicle manufacturer from refusing to allow, limiting, or restricting a motor vehicle dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles to their same or expanded facility, unless the manufacturer is able to demonstrate that such action is justified by consideration of reasonable facility and financial requirements and the dealer's performance for the existing line-make.
- Adding to the definition of an unfair discontinuation, cancellation, or non-renewal of a franchise agreement. If a motor vehicle dealer is not given 180 days notice to cure the alleged breach of the franchise agreement when the breach relates to the dealer's sales or service, the discontinuation, cancellation, or non-renewal of the agreement is considered unfair.

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

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

STORAGE NAME: h0815c.EEIC.doc

DATE: 3/30/2007

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: CS/HB 815 creates additional requirements and obligations on 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 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.

Section 320.64, F.S., outlines the causes for the Department of Highway Safety and Motor Vehicles (Department) 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, cancelling, 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 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 that 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.

Proposed Changes:

CS/HB 815 makes a number of changes to existing statutes regulating automobile franchisees in this state. 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 that 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 videoconference with a representative of the dealer and provided:
 - a detailed explanation of each of the charge-backs with supporting documentation, and
 - a written statement containing the basis upon which the dealer was selected for the audit or review.
- Providing the dealer no less than 45 days after the meeting to explain the dealer's position relating to each of the 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 receives new information affecting the basis for the charge-backs.
 - If the manufacturer claims the existence of new information, the dealer is provided 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 their same or expanded facility, unless the manufacturer is able to demonstrate that such action 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:

- Adding to the current statutory definition of an "unfair discontinuation, cancellation, or non-renewal of a franchise agreement". If a motor vehicle dealer is not given 180 days notice to cure the alleged breach of the franchise agreement when the breach relates to the dealer's sales or service, the discontinuation, cancellation, or non-renewal of the agreement is considered unfair.

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.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.64, F.S., by revising provisions for grounds for denial, suspension, or revocation of a license of a motor vehicle manufacturer, factor branch, distributor, or importer licensed by the Department to enter into franchise agreements with dealers; prohibiting certain charge-backs of

warranty services payments made to a dealer unless certain procedures are followed; revising such procedures; and prohibiting applicant or licensee from refusing to allow, limiting, or restricting a motor vehicle dealer acquisition or addition of operations for another line-make of motor vehicles without demonstrating that such action is justified by consideration of reasonable facility and financial requirements and the dealer's performance for the existing line-make.

Section 2. Amends s. 320.641, F.S., by revising procedures for a determination that a discontinuation, cancellation, or non-renewal of a franchise agreement by the applicant or licensee is unfair; and providing for a 180-day notice to cure an alleged breach of the agreement, when such breach relates to a dealer's sales or service performance.

Section 3. Provides an effective date of July 1, 2007.

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 CS/HB 815 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.

D. FISCAL COMMENTS:

There is no government fiscal impact. The Department of Highway Safety and Motor Vehicles already regulates this industry, so the additional grounds in the bill for regulatory actions should result in no additional state impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Automobile Dealers Association claims that 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 that 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 that, 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/HB 815, they claim, is to provide dealers with an opportunity to demonstrate that a dealer's deficiencies in performance have been corrected prior to the institution of formal termination proceedings.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, this bill was considered by the Committee on Infrastructure. The following amendments were adopted:

- Amendment 1 clarified the manufacturer may also meet with a dealer by telephone or videoconference to discuss proposed charge-backs; required the manufacturer to provide the dealer with documentation for each charge-back and gives the dealer at least 45 days to respond; and specified the dealer must be given the right to a meeting and to respond if the manufacturer changes the basis for a charge-back.
- Amendment 2 required the manufacturer to provide a 180-day cure period before ending a franchise agreement if the alleged failure relates to the dealer's sales or service performance.

The bill was reported favorably with two amendments.

On March 29, 2007, this bill was considered by the Economic Expansion and Infrastructure Council. One amendment was adopted which required the manufacturer to demonstrate their refusal to allow, limit, or restrict another line-make of motor vehicles at the same facility where the dealer currently operates is justified by consideration of reasonable facility and financial requirements, in addition to the dealer's performance. The bill was reported favorably as a council substitute.