HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 815 Motor Vehicle Dealers
SPONSOR(S): McKeel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	9 Y, 0 N	Owen	Miller
2) Economic Expansion & Infrastructure Council			
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.

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

- Requiring the motor vehicle manufacturer to meet in person with the dealership they are charging back subsequent to an audit for warranty or incentive payments.
- 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.
- Requiring the motor vehicle manufacturer to provide 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 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 prove the addition will substantially impair the dealer's ability to sell or service the manufacturer's motor vehicles.
- 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, 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: 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:

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 at the dealership with a representative of the dealer and explained in detail the basis for each of the charge-backs. The dealer is given no less than 30 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.
- Directing the manufacturer to provide the dealer, at or prior to the meeting, with a written statement containing the basis or methodology upon which the dealer was selected for the audit or review.
    - 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 prove the addition will substantially impair the dealer's ability to sell or service the manufacturer's motor vehicles.

Amends s. 320.641(3), F.S. by:

- Specifying in the current statutory definition of an "unfair discontinuation, cancellation, or non-renewal of a franchise agreement" that if a motor vehicle dealer is not given 180 days' notice to cure the alleged breach of the franchise agreement, 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 a showing that the acquisition or addition would impair the dealer's ability to adequately sell or service such applicant's or licensee's motor vehicles.

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.

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 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 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.

An amendment was adopted which clarifies the manufacturer may also meet with a dealer by telephone or videoconference to discuss proposed charge-backs; requires the manufacturer to provide the dealer with documentation for each charge-back and gives the dealer at least 45 days to respond; and specifies the dealer must be given the right to a meeting and to respond if the manufacturer changes the basis for a charge-back.

A second amendment was adopted which requires 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.