The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/CS/SB 2150

INTRODUCER: Commerce Committee, Transportation Committee and Senator Bennett

SUBJECT: Motor Vehicle Dealerships

DATE: April 1, 2008 REVISED:

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 2150 addresses a number of issues related to the activities of motor vehicle dealers.

It modifies the statutory definition of "motor vehicle dealer" in ch. 320, F.S., to clarify that nonfranchised dealers cannot apply for a certificate of title using a Manufacturer's Statement of Origin (MSO) except for certain vehicles.

CS/CS/SB 2150 further amends ch. 320, F.S., to prohibit additional dealer locations, define certain new locations to be unlawful, and provide competing dealers with a private right of action against dealers with such unlawful locations and against the distributor providing vehicles to the location. The Department of Highway Safety and Motor Vehicles (department) also is granted enforcement rights regarding the new 'unlawful location' provisions.

Also included in CS/CS/SB 2150 are modifications to Part VI of ch. 501, F.S., which regulates motor vehicle dealer actions under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and provides guidelines regarding motor vehicle pricing and notice to consumers. CS/CS/SB 2150 defines the "advertised priced" of a vehicle for FDUPTA purposes. It also requires motor vehicle dealers to attach a label to for-sale vehicles (except for motorcycles) that

discloses any charges for pre-delivery services, such as inspecting, cleaning, adjusting and preparing paperwork.

CS/CS/SB 2150 amends ss. 320.27, 501.975, and 501.976, and creates s. 320.6425 of the Florida Statutes.

II. Present Situation:

Motor Vehicle Dealers

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. Franchised motor vehicle dealers are those who have entered into contracts with automobile manufacturers to sell new vehicles, and among the terms of their contracts are exclusive geographic service areas where only they can sell specific makes and models of vehicles.

The definition of "motor vehicle dealer" provided in s. 320.27(1)(c), F.S., contains several substantive provisions of law, rather than merely providing a definition. Among these substantive laws are permissions and prohibitions regarding certificates of title, and whether certain vehicles may be titled as "new" or "used." With regard to typical new automobiles, dealers are permitted to apply for a title using the manufacturer's statement of origin (MSO), only if the dealer is:

- Authorized by franchise agreement to buy, sell, or trade such vehicle, and
- Authorized by agreement to perform delivery, preparation, and warranty defect "adjustments" on the vehicle.

This limitation on dealers does not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis.

Notwithstanding the requirements above, that only franchised dealers may use a MSO to title a new vehicle, the statute subsequently states that a new vehicle transferred (meaning "sold") by a nonfranchised dealer must be titled as "used." This statement appears to suggest that a dealer without a franchise agreement can use an MSO to title a vehicle, which is an internal inconsistency in the law.

According to a representative of the Florida Automobile Dealers Association, this provision has allowed some franchised dealers to sell new vehicles at used-car lots at locations different from their main dealership, thus creating unfair competition with dealers who are legitimately selling the same make and model of cars in their geographic service area.

Motor Vehicle Dealership Locations

Section 320.642, F.S., provides 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 to the department. The department must review the notice and may object to the addition or relocation if certain criteria exist. Department denials

remain in effect for 12 months.[1]

The department may deny the request if another dealer timely files a protest or if the applicant fails to adequately establish that current locations do not "adequately represent" the dealer in the community or territory. Section 320.642(2)(b), F.S., provides eleven specific criteria the dealer may use to meet the burden of proof. Other dealers have standing to protest, pursuant to s. 320.642(3), F.S. The section provides demographic and geographic requirements dealers must document in order to prove standing. Openings and re-openings of the same dealer are not considered "relocations," unless certain geographic limitations are reached.[2] "Service only" locations must be noticed, but are subject to limited protests.

The department promulgated Rule 15C-7.005, F.A.C., to further address dealer locations. The rule, "Unauthorized Additional Motor Vehicle Dealerships-Unauthorized Supplemental Dealership Locations," provides that additional dealerships are deemed to be created when vehicles are "regularly and repeatedly" sold at specific locations, and are unlawful for failure to register under s. 320.642, F.S., if the dealer:

- Is not located in Florida;
- Is not a licensed dealer with a franchise to sell the relevant line-make; or
- Is a licensed dealer with a franchise to sell the relevant line-make, but the sales occur at a location other than that permitted by the license, except that sales made "occasionally and temporarily (not to exceed 7 days)" are permitted, if the sales are also within the dealer's licensed "area of sales responsibility."

The rule authorizes the department to investigate complaints that a dealer is violating the rule's provisions, and provides notice and hearing requirements. The rule explicitly states it does not create a private right of action for any individual; it reserves all remedies to the department and adversely-affected competing dealers.

On April 20th, 2007, an Administrative Law Judge (ALJ) ruled, in promulgating Rule 15C-7.005, F.A.C., the department exceeded its rulemaking authority in violation of s. 120.52(8)(b) and (c), F.S. The ALJ also deemed the rule to be an invalid exercise of delegated legislative authority.

Denial, Suspension, or Revocation of a Dealer's License

Section 320.27(9)(b), F.S., permits the department to deny, suspend, or revoke a dealer's license for a series of violations. The department must prove the dealer has committed such violations with sufficient frequency to establish a pattern of wrongdoing. The prohibited activities currently include:

- Misrepresenting "demo" vehicles as new;
- Unjustifiable refusal to perform certain warranty work;
- Misleading or false statements regarding sales or financing information;
- Failure to provide customers with odometer disclosure statements, sales, contracts, or other documents;
- Failure to comply with the terms of written agreements;

[1] Section 320.642(4), F.S.
[2] Section 320.642(5), F.S.

- Failure to apply for title appropriately;
- Use of a dealer's identification number by another;
- Failure to "continually meet the requirements of the licensure law";
- Representation of a vehicle as new, to a customer who cannot lawfully take title to the vehicle based on an MSO;
- Forcing unwanted equipment on a customer's purchased vehicle;
- Requiring customers to use specific financing companies;
- Requiring customers to contract with the dealer for "physical damage insurance";
- Misrepresentation of a franchise's relationship with a manufacturer, importer, or distributor;
- Violations of s. 319.35, F.S., regarding odometer tampering;
- Reselling a customer's "trade-in" vehicle to a second customer, before the first exchange is lawfully completed;
- Willful failure to comply with administrative rules of the department;
- Violations of ch. 319, F.S., ch. 320, F.S., certain provisions regarding motor vehicles and mobile homes in ch. 559,F.S.,[3] or violations of certain federal customer-disclosure requirements;
- Failure to maintain evidence of fees owed to the department by new owners; and
- Failure to register a mobile home salesman.

Disclosure of motor vehicle sales prices[4]

Florida has a number of laws to protect consumers. The principle law relating to the automobile dealer-consumer relationship is Part VI of ch. 501, F.S. This section of law describes prohibited dealer actions under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and provides guidelines regarding motor vehicle pricing and notice to consumers. The state law supplements federal law in this area.

Federal law (the Monroney Act)[5] requires manufacturers to affix to each new automobile a sticker that shows the suggested retail sales price for each vehicle. This sticker must be attached to the side window of the vehicle and state several items of information, including the:

- Make and model of the car;
- Serial or identification numbers;
- Final assembly point;
- Name and location of the final dealer to whom it is delivered;
- Method of transportation used in making the delivery;
- Manufacturers' Suggested Retail Price (MSRP);
- MSRP of optional equipment installed on the vehicle;
- Transportation charges for delivery of the vehicle from the manufacturer;
- Total MSRP of all of the aforementioned charges; and
- Environmental Protection Act's mileage estimates for the vehicle.[6]

[3] Sections 559.901-559.9221, F.S.

[4] This section of the bill analysis is derived from the Commerce Committee's Interim Project Report 2008-107, "Examination of Automobile Dealers' Documentation Fees."

[5] 15 U.S.C. § 1231, et. seq. (the Monroney Act). Motorcycles are exempt from the act's requirements, pursuant to a cross-referenced definition in 49 U.S.C. § 32101(10).

In addition to the "Monroney Sticker," consumers also may see a supplemental sticker, known as the "Dealer Addendum Sticker," which shows the suggested retail price of dealer-installed options. This dealer sticker also may list the dealer preparation fee and the pre-delivery service fee. At the dealer's option, the dealer sticker may include a total of the charges listed on both stickers.

It is generally recognized in the automobile sales industry that the charges listed on the Monroney and dealer stickers may be negotiable.

Vehicle purchasers also are required to pay several fees imposed by state law, such as sales tax, title, registration, licensing, new tire fees and a battery fee. These fees are not negotiable, and typically are not included on the Monroney or dealer sticker.
At some point the customer meets with a sales person or business manager to negotiate a final sales price for the vehicle. At this time, the dealer may offer a number of options not listed on the Monroney or dealer sticker. These options may, for example, include:

- Warranties, in addition to factory warranties;
- "Gap" insurance, to pay the difference between a car loan and vehicle value if a vehicle is "totaled";
- Paint protection;
- Security Systems; and
- Service plans for scheduled maintenance.

At some point in the sale's process, the dealer completes a "Buyer's Order" [7]or similar document listing the costs to the consumer of the vehicle selected. If imposed, the dealer's pre-delivery service fee is required to be specified on this document. The pre-delivery service fee is also referred to as a documentation or documentary fee ("Doc Fee"), dealer fee, dealership services fee, dealer service fee, dealer preparation fee, delivery or handling fee, or processing fee. Committee staff research indicates most dealers in Florida impose this fee, which is intended to either increase dealer profit or offset costs incurred by the dealer in preparing the vehicle and associated documents for the customer. The statutes recognize this industry practice and require the following statement be included on all documents that include a line-item for the fee:

> "This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."[8]

In Florida, this fee varies among dealerships and, at times, among customers of the same dealership, and pre-delivery service fees are widely imposed by new and used automobile dealers.[9]

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[6] Autopedia, Monroney Sticker History, http://autopedia.com/html/monroneysticker.html. (summarizing 15 U.S.C. § 1232), last visited August 31, 2007.
[7] The Buyer's Order "is a sales contract between the buyer and the seller that includes the sale price of the vehicle and any additional fees and charges that will be assessed during the sales transaction." Ted L. Smith, President, FADA. (Sept. 27, 2007).
[8] Section 501.976(18), F.S.

At least 13 other states impose limits on pre-delivery service fees in the following manner:

- Arkansas -- $129;
- California -- $55;
- Illinois -- $55;
- Louisiana -- $50 ($35 documentation fee plus $15 notary fee);
- Maryland -- $100;
- Michigan -- $170;
- Minnesota -- $50;
- New York -- $45;
- Ohio -- $250;
- Oregon -- $50;
- Texas -- $75; and
- Washington -- $100.[10]

Additionally, in recent years several states have expanded notice requirements to consumers of dealer charges and fees. For example, California recently passed a "Car Buyer's Bill of Rights" that, among other requirements, prohibits motor vehicle dealers from excluding from the advertised price of a vehicle, all costs to the purchaser at the time of sale, including the dealer document preparation charge. A 2007 Arkansas law also requires notice to customers of the fee in the form of a disclaimer noting that the fee is not a government fee and may result in profit to the dealer.

III. Effect of Proposed Changes:

Section 1 amends s. 320.07(1)(c), F.S., to modify the definition of "motor vehicle dealer." The modifications:

- Clarify that automobiles, trucks, and heavy trucks, tractors and trailers required to be registered under s. 320.08(3)(a), (b), and (c), F.S., and s. 320.08(4)(a)-(n), F.S., may be registered using a MSO only by an authorized franchised dealer.
- Eliminate one exemption to the MSO new-car registration requirement – "other motor vehicle[s] manufactured on a truck chassis." Recreational vehicles and van conversions (for such purposes as retrofitting for handicapped drivers) would continue to be exempt.
- Deletes an internal inconsistency in the law that allowed new vehicle transferred (meaning sold) by a nonfranchised dealer must be titled as a used vehicle. The practical effect of this is a franchised dealer who decides to sell new cars to a nonfranchised dealer can not also transfer the MSO documents accompanying the new cars. The nonfranchised dealer would have to buy the new vehicles, and pay the applicable taxes, and tag and title fees, as any purchaser would.

Additionally, the section adds a 20th violation to the department's oversight obligation in s. 320.27(9)(b), F.S., which is "any violation of s. 320.6425, F.S., by any motor vehicle dealer,

[9] Interim Project 2008-107, "Examination of Automobile Dealers' Documentation Fees." Prepared by staff of the Senate Commerce Committee. Page 6.
[10] Ibid, Page 7.

including the operation of an unlawful additional motor vehicle dealership location or unlawful supply of motor vehicles."[11]

This section also grants motor vehicle dealers a private right of action against other dealers engaged in violations of the newly created s. 320.6425, F.S. The burden of proof is the same as the department's burden, to prove the dealer has committed a violation, "with sufficient frequency so as to establish a pattern of wrongdoing." The cause of action may be for injunctive relief, actual damages including lost profit, court costs, and reasonable attorney's fees, and may be brought in any court of competent jurisdiction.

Section 2 creates s. 320.6425, F.S., which contains substantially similar provisions to those previously found in the department's recently invalidated "Unauthorized Additional Motor Vehicle Dealerships-Unauthorized Supplemental Dealership Locations" rule. The CS provides the same 3-point test described above, defines a "retail sale" and clarifies this new statute does not prohibit the common practice of reselling motor vehicles taken in trade.

This section also determines any dealer providing vehicles for an unauthorized location is acting as an "unlicensed distributor," and authorizes other dealers of the same line-make to bring a private action for injunctive relief and damages against the "unlicensed distributor." The CS asserts nothing in the new statute prohibits one franchised dealer from selling vehicles to another dealer franchised to sell the same line-make vehicle.

Section 3 amends s. 501.975, F.S., to define "advertised price" of a motor vehicle as "the price expressed in any statements – transmitted orally, in writing, electronically, or illustratively – disseminated to the public or affixed to a vehicle, that is used to induce a customer to buy the vehicle. This provision, in concert with the proposed changes in Section 4 of the bill, is intended to clarify that a vehicle's sales price prominently displayed in advertisements, or painted on or otherwise attached to a for-sale vehicle, includes all the costs, fees, or charges that a dealer decides to charge a customer, excluding required state and local-government taxes or fees.

Section 4 amends s. 501.976, F.S., to clarify that the advertised price excludes state and local taxes, tags, registration fees and title fees. Thus, the advertised price includes all the costs, fees, or charges, including a profit margin, which the dealer decides to charge a customer.

This section also replaces existing language regulating the advertised price of vehicles that are the subject of joint advertising by two or more dealers. Currently, the advertised price need not include any fees or charges that vary from one participating dealer to the next. This section, however, specifies that the advertised price of a jointly advertised vehicle must include the highest price of the vehicle being offered, or specify the price for the vehicle as set by each participating dealer.

Additionally, dealers who display their vehicles for customers' public inspection must attach a conspicuous label to the vehicles' windows specifying any charge for pre-delivery services. The label also must include the following disclosure:

[11] The referenced statute is the "unlawful additional motor vehicle dealership" created by this CS.

"This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."

This label requirement does not apply to motorcycles.

Section 5 provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Automobile shoppers may be more inclined and better informed to negotiate with dealers, since certain charges designed as profit-makers for dealers will be disclosed earlier in the car-buying process. Automobile dealers may see a reduction in profits on individual sales of cars if they have to disclose their profit mark-up in such a visible fashion.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce Committee on April 1, 2008:
This CS differs from the previous iteration of the bill in the following ways:

- Reinstates the exemption in ch. 320, F.S., allowing certain dealers to sell recreational vehicles and converted or re-equipped vans to be sold as new without having an MSO.
- Amends s. 501.975, F.S., to add a definition for the "advertised price" of a motor vehicle.
- Amends s. 501.976, F.S., to add disclosure requirements for what types of charges are to be included in the advertised price, and how the information about pre-deliver fees is to be disclosed.

CS by Transportation Committee on March 25, 2008:

- Modifies the definition of "motor vehicle dealer" in s. 320.27(1)(c), F.S., to clarify motor vehicles required to be registered under s. 320.08(3)(a), (b), and (c), F.S., and s. 320.08(4)(a)-(n), F.S., relating to trucks, heavy trucks, and truck tractors may be registered using a MSO only by a authorized franchised dealer.
- Eliminates recreational vehicles and van conversions from an exception to the MSO requirements.
- Clarifies motor vehicle dealers may seek damages against "any motor vehicle dealer deemed to be a distributor or licensee by the provisions of subsection (3)."

B. Amendments:

None.