

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1525 Motor Vehicle Dealerships

SPONSOR(S): Lopez-Cantera

TIED BILLS: IDEN./SIM. BILLS: SB 2630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee	17 Y, 3 N, As CS	Livingston	Cooper
2) Military & Local Affairs Policy Committee	(ref. removed)		
3) General Government Policy Council		Livingston	Hamby
4) Finance & Tax Council			
5)			

SUMMARY ANALYSIS

Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

The bill specifies that after audit time periods have elapsed, warranty or other service-related payments and incentive payments are final. The motor vehicle dealer may not be subject to an adverse action such as financial charge-backs, reducing vehicle allocations, or threatening franchise termination.

A licensee may deny a claim or, as a result of a timely conducted audit, charge a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if a licensee can show that the payment for claims were falsely calculated or the dealer failed to comply with the procedures of the licensee for documenting the payments that are claimed to be due.

The bill repeals a conclusive presumption in s. 320.64(26), F.S., relating to one of the offenses for which a dealer can be penalized.

The bill amends the criteria for denial by the Department of Highway Safety and Motor Vehicles (DHSMV) of a request to expand operations by a dealer to specify that: a geographic comparison area used to evaluate the performance of the line-make or dealers within the community or territory must be similar in demographic traits to the community or territory of the proposed site and expected market sales or service penetration must be measured with respect to the community or territory as a whole.

The bill also adds criteria for denial by the DHSMV of a request to expand operations by a dealer to include: foreseeable economic projections, financial expectations, availability of reasonable terms and reasonable amounts of credit to prospective customers; whether there will likely be a material positive impact and a material benefit to consumers; expected growth or decline in population, density of population, and new motor vehicle registrations in the community or territory; anticipated degree of marketing and advertising support; and expectation for a reasonable return on investment.

The bill specifies that a licensee or the DHSMV must deny a proposed transfer of a legal, equitable, or beneficial interest in a dealership to a trust or other entity or to a beneficiary unless the controlling person or entity is of good moral character. The bill also specifies that a licensee or the DHSMV may not require the transfer based on the relocation or remodeling of the dealership structure or upon any modification of the existing franchise agreement.

The bill is not anticipated to have a fiscal impact on state or local governments.

The bill takes effect upon becoming a law.

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

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DATE: 4/8/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor vehicle franchise dealerships - generally

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. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

Section 320.60(1), F.S., defines "Agreement" or "franchise agreement" to mean a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.

Section 320.60(14), F.S., states that "Line-make vehicles" are those motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same.

Section 320.27, F.S. defines a "franchised motor vehicle dealer" as "any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1)."

Section 320.61(1) states, in part, "No manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business in this state without a license therefor..."

The requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers by the Department of Highway Safety and Motor Vehicles (DHSMV) are primarily by the in ss. 320.60 -320.071, F.S. These sections of law specify, in part:

- the conditions and situations under which the DHSMV may deny, suspend, or revoke a license;

- the process, timing, and notice requirements for licensees 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 licensee 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;
- amounts of damages that can be assessed against licensee in violation of statutes; and
- DHSMV's authority to adopt rules to implement these sections of law.

Dealer penalty criteria

Present situation

Section 320.64, F.S., outlines 37 specific causes for which the DHSMV may deny, suspend, or revoke a license.

A violation of any of these provisions entitles a dealer to the rights and remedies of ss. 320.695 – 320.697, F.S. These remedies include injunctions against licensees, as well as, treble damages and reasonable attorney's fees to be paid by licensees.

A licensee may periodically audit the transactions of a motor vehicle dealer relating to certain financial operations by the dealer. Audits of warranty payments may only be performed by a licensee during the 1-year period immediately following the date a warranty claim was paid. Audits of incentive payments may only be performed by a licensee during an 18-month period immediately following the date the incentive was paid.

Section 320.64(26), F.S., details the types of actions against a dealer by a licensee if the dealer distributes cars for foreign export. This section provides that in a legal challenge, the licensee must prove that the motor vehicle dealer had "actual knowledge that the customer's intent was to export or resell the motor vehicle." This section also states that if the disputed vehicle is titled in any state of the United States, there is a "conclusive presumption"¹ that the dealer had no actual knowledge.

Effect of proposed changes

The bill amends s. 320.64, F.S., which specifies actions that may lead the DHSMV to deny, suspend, or revoke the state license of a vehicle manufacturer, distributor, or importer. The section adds or elaborates upon five situations related to automobile franchise agreements between manufacturers, distributors, and importers and the auto dealers who sell their products. Specifically:

- Subsection (5) is amended to prevent a licensee from coercing a motor vehicle dealer into involuntarily ordering or accepting motor vehicles or parts that are in excess of that number which the dealer considers as reasonably required to adequately represent the licensee's line-make in order to meet market demand.
- Subsection (10) is amended to provide additional criteria for incentives and financial support from a licensee to a dealer for relocation relief.
- Subsection (25) is amended to specify after audit time periods have elapsed, warranty or other service-related payments and incentive payments are final. The motor vehicle dealer may not be subject to any financial repercussions. A licensee may deny a claim or, as a result of a timely conducted audit, charge a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if a licensee can show that the payment for claims were falsely calculated or the dealer failed to comply with the procedures of the licensee for documenting the payments that are claimed to be due.

¹ Black's Legal Dictionary, 6th ed., states that a conclusive presumption exists "when an ultimate fact is presumed to be true upon proof of another fact, and no evidence, no matter how persuasive, can rebut it."

- Subsection (26) is amended to delete the provisions stating, “there is a conclusive presumption that the dealer had no actual knowledge if the vehicle is titled or registered in any state in this country.”
- Subsection (36) provides guidelines addressing the distribution of the franchise assets under a bankruptcy scenario. Specifically, the subsection provides if the termination of the dealer’s franchise is the result of the bankruptcy or reorganization of a licensee, or the termination, of the line-make, in addition to the other required payments to the dealer, the licensee is liable to the motor vehicle dealer for an amount at least equal to the fair market value of the franchise for the line-make or, if the licensee is unable to pay, also must pay to the dealer a sum equal to the rent for the unexpired term of the lease or three years’ rent, whichever is less, or a sum equal to the reasonable fair rental value of the dealership facilities for a period of three years.

Franchise relocations

Present situation

Section 320.642, F.S., provides that a dealer who proposes to establish an additional dealership or proposes to relocate an existing dealership to a location within a community or territory where the same line-make vehicle is presently represented by a franchised motor vehicle dealer must give notice to DHSMV. The notice must include:

- The specific location at which the additional or relocated motor vehicle dealership will be established.
- The date on or after which the dealer intends to be engaged in business with the additional or relocated dealership at the proposed location.
- The identity of all dealers who are franchised to sell the same line-make vehicles within the county or any contiguous county to the county where the additional or relocated dealer is proposed to be located.
- The names and addresses of the dealer and principal investors in the proposed additional or relocated motor vehicle dealership.

The DHSMV may deny the request if another dealer timely files a protest and 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. “Service only” locations must be noticed, but are subject to limited protests.

Effect of proposed changes

The bill amends the criteria for denial by the DHSMV of a request to expand operations by a dealer to specify that:

- a geographic comparison area used to evaluate the performance of the line-make or dealers within the community or territory must be similar in demographic traits to the community or territory of the proposed site;
- expected market sales or service penetration must be measured with respect to the community or territory as a whole.

In determining whether the existing franchised dealers are providing adequate representation, the bill adds criteria to include:

- foreseeable economic projections, financial expectations, availability of reasonable terms and reasonable amounts of credit to prospective customers;
- whether there will likely be a material positive impact and a material benefit to consumers;
- expected growth or decline in population, density of population, and new motor vehicle registrations in the community or territory;
- anticipated degree of marketing and advertising support; and
- expectation for a reasonable return on investment.

The bill amends s. 320.642(3)(a) and (b), F.S., to provide dealers with standing to protest, (defined in terms of either being within 15 miles of the proposed dealership site or having 20% of new vehicle sales registered within 15 miles of the proposed dealership site, or performed repairs on the same line-make motor vehicles which constituted 15% of its total service department sales within 15 miles of the proposed dealer site) may protest the establishment of the additional dealership or relocation of the existing dealership.

The bill amends s. 320.642(6)(a), F.S., to include dealers standing to protest the addition or relocation of a service-only dealership are limited to those instances in which the applicable mileage requirement established in s. 320.642(3)(b)2., F.S., are met.

The bill amends s. 320.642(6)(b), F.S., to provide the addition or relocation of a service-only dealership is not subject to protest if the proposed location of an additional or relocated service-only dealership radius from all existing motor vehicle dealerships or the same line-make is to at least 10 miles (increased from at least 7 miles).

Transfer of an interest in a franchise

Present situation

Sections 320.643 and 320.644, F.S., provide procedures for requesting and objecting to transfers of franchise agreements, transfers of assets, and changes in executive management control. If the licensee objects to the transfer or change, the dealer may file a complaint. At a hearing on the complaint, the licensee is required to prove the transfer or change is to a person who is not of good moral character, does not meet the licensee's financial qualifications (in the case of transfers), or does not have the required business experience. Pending a hearing regarding a proposed transfer of an agreement or assets, or a proposed change in executive management control, the franchise agreement continues in effect in accordance with its terms.

Effect of proposed changes

The bill specifies that a licensee or the DHSMV must deny a proposed transfer of a legal, equitable, or beneficial interest in a dealership to a trust or other entity, or to a beneficiary, unless the controlling person or entity is of good moral character. The bill also specifies that a licensee or the DHSMV may not require the transfer based on the relocation or remodeling of the dealership structure or upon any modification of the existing franchise agreement.

Warranty Responsibilities

Present situation

Section 320.696, F.S., contains the dealer warranty provisions specifying a formula by which dealers are to be reimbursed for labor and parts used in warranty service. This section was amended by the 2007 Legislature to specify manufacturers had to reimburse dealers for parts used in warranty repairs at the dealers' retail rates, just as labor costs for warranty work were already specified. This section was further amended during the 2008 session to clarify the issue of reimbursement rates for warranty work. Specifically, s. 320.696, F.S., authorizes four options for reimbursement for warranty parts:

- Through an agreement between the manufacturer and dealer or

- If no agreement is reached within 30 days after the dealer has made a claim, then the reimbursement is the greater of:
 - The mean percentage markup from 50 consecutive retail customer repairs within the last three months;
 - The manufacturer's highest suggested retail or list price for the parts; or
 - An amount equal to the price a dealer receives from customers for parts used in non-warranty repair work.

Similarly, compensation for labor in warranty repair work would either be by agreement, or, if no agreement is reached within 30 days, then the greater of the hourly rate charged for retail customer repairs or an amount equal to the dealer's markup over dealer cost for retail customer-paid repairs.

Effect of proposed changes

The bill amends s. 320.696, F.S., related to reimbursement of warranty work, and increases the dealer's arithmetical mean percentage markup over dealer cost estimate to include 75 (from 50) consecutive retail customer repairs within a three-month period.

The bill deletes one of the options for determining reimbursement for warranty parts and labor relating to an amount equal to the price a dealer receives from customers for parts used in non-warranty repair work.

Similarly, the option for compensation for labor in warranty repair work is eliminated relating to an amount equal to the dealer's markup over dealer cost for retail customer-paid repairs.

B. SECTION DIRECTORY:

Section 1. Amends s. 320.64, F.S., to provide additional criteria for the denial, suspension, or revocation of a license.

Section 2. Amends s. 320.642, F.S., to expand the criteria for denial by the DHSMV of a request to expand operations by a dealer.

Section 3. Amends s. 320.643, F.S., relating to the denial of a request to transfer interest in a dealership.

Section 4. Amends s. 320.696, F.S., related to reimbursement of warranty work.

Section 5. Provides a severability clause.

Section 6. Provides an effective date of upon becoming a law.

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:

See D., below

D. FISCAL COMMENTS:

Indeterminate. To the extent that the bill could require motor vehicle manufacturers to provide additional compensation to motor vehicle dealers for warranty work, there may be an increase in expenditures for manufacturers who currently compensate dealers for warranty labor and parts at levels below market prices. In the same respect, dealers in the state of Florida may see an increase in revenues due to the increase in the level of reimbursement received for warranty work from manufacturers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 19, 2009, the Insurance, Business, and Financial Affairs Committee took up the bill, adopted a strike all amendment, and passed the bill as a CS. The CS differs from the bill as originally filed as follows:

The CS:

- Prevents a licensee from coercing a motor vehicle dealer into involuntarily ordering or accepting motor vehicles, parts, accessories, or other commodities in excess of that number which the dealer considers as reasonably required to adequately represent the licensee's line-make in order to meet current and foreseeable market demand.
- Provides additional criteria for incentives and financial support from a licensee to a dealer for relocation relief.
- Specifies after audit time periods have elapsed, warranty or other service-related payments and incentive payments are final. The motor vehicle dealer may not be subject to an adverse action such as financial charge-backs, reducing vehicle allocations, or threatening franchise termination.
- Provides a licensee may deny a claim or, as a result of a timely conducted audit, charge a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments

only if a licensee can show the payment for claims were falsely calculated or the dealer failed to comply with the procedures of the licensee for documenting the payments claimed to be due.

- Repeals a conclusive presumption in s. 320.64(26), F.S., relating to one of the offenses for which a dealer can be penalized.
- Provides guidelines addressing the distribution of the franchise assets under a bankruptcy scenario.
- Includes criteria when determining whether the existing franchised dealers are providing adequate representation, adequate competition, and convenient customer service, to include anticipated degree of marketing and advertising support.
- Modifies provisions authorizing dealers with standing to protest.
- Increases the radius to at least 10 miles that a proposed location of an addition or relocation of a service-only dealership can be from all existing dealerships and not be subject to protest.
- Prohibits the rejection of proposed transfer of interest in a motor vehicle dealer entity to a trust or other entity, or a beneficiary thereof, which is established for estate-planning purposes, if the controlling person of the trust or entity, or beneficiary, is of good moral character.
- Increases the dealer's arithmetical mean percentage markup over dealer cost estimate to include 75 consecutive retail customer repairs within a three-month period, as it relates to reimbursement of warranty work.
- Deletes one of the options for determining reimbursement for warranty parts and labor.