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 Transportation Committee

BILL: CS/CS/SB 2630

INTRODUCER: Commerce Committee, Transportation Committee and Senator Haridopolos

SUBJECT: Motor Vehicle Dealerships

DATE: April 6, 2009 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:

Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. Sections 320.61-320.70, F.S., provide for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and regulate numerous aspects of the franchise contracts these businesses enter into to conduct business in the state of Florida.

CS/CS/SB 2630 addresses a number of issues related to the activities of dealers and licensees that have arisen. One key modification is the requirement for certain payments to dealers if a bankrupted or reorganized licensee terminates or fails to renew a franchise agreement or ceases production of vehicles that were being sold by the dealers. Another modification adjusts the geographic distances between dealerships, for the purposes of challenging the establishment of a new dealership.

Other changes include:

- Amending existing criteria for denial by the Department of Highway Safety and Motor Vehicles (DHSMV) of a request to expand operations by a dealer.

- Amending existing criteria, and adding new grounds, for the DHSMV to penalize licensees because of their actions against franchised dealers.
- Specifying that once audit time periods have elapsed, warranty or other service-related payments, and incentive payments, from licensees to dealers are final.
- Allowing a licensee to 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 was falsely calculated or the dealer failed to comply with the licensee's procedures for documenting the payments claimed to be due.
- Specifying a licensee or the DHSMV shall not reject a proposed transfer of a legal interest in a dealership to a trust or other entity for estate planning purposes, if the controlling person of the trust or entity, or the beneficiary, is of "good moral character."
- Specifying that a licensee or the DHSMV may not condition a proposed transfer based on a relocation of, construction of any addition or modification to, or refurbishing or remodeling of the dealership structure, facility, or building or the existing motor vehicle dealer, or upon any modification of the existing franchise agreement.
- Deleting one of the options for determining reimbursement for warranty parts and labor.
- Clarifying that a licensee may not decrease flat-rate times from or establish an unreasonable flat-rate time in its warranty repair manual, warranty time guide, or any other similarly named document, unless the licensee can prove it has improved the technology related to a particular repair and thereby has lessened the average repair time.

CS/CS/SB 2630 also provides a severability clause.

CS/CS/SB 2630 substantially amends ss. 320.64, 320.642, 320.643 and 320.696 of the Florida Statutes; and creates an undesignated section of law.

II. Present Situation:

Motor Vehicle Franchise Dealerships - Generally

Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles (or line-make) 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), F.S, 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 licensees by the DHSMV are primarily 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 a licensee in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Penalty Criteria

Section 320.64, F.S., outlines the causes for the DHSMV to deny, suspend, or revoke the license of a manufacturer, importer, or distributor of motor vehicles to do business in Florida. There are 37 different causes of action that could lead the DHSMV to take that action. 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.

Section 320.64(5), F.S., prohibits a licensee from coercing or attempting to coerce a motor vehicle dealer into accepting delivery of motor vehicles, parts, or accessories, or any other commodities which have not been ordered by the dealer.

Section 320.64(10), F.S., prevents a licensee from requiring a dealer to relocate, expand, improve, remodel, renovate, or alter previously approved facilities unless the licensee's requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations and the motor vehicle dealer's market for the licensee's motor vehicles. A licensee may provide a commitment to allocate additional vehicles or a loan or grant to the dealer as an inducement to remodel or renovate his facilities, as long as the agreement is in writing and was voluntarily entered into by the dealer. This inducement also must be available on substantially similar terms, for any of the licensee's same line-make dealers in Florida, and the licensee cannot withhold a bonus or other incentive that is available to its other same line-make Florida dealers if the licensee offers to enter into an agreement. Also a licensee cannot selectively offer incentive programs to dealers in Florida, other regions, or other states. A licensee may not discriminate against a dealer with respect to a

program, bonus, incentive, or other benefit within the licensee's zone or region that includes Florida. Finally, licensees may establish and uniformly apply reasonable standards for a dealer's sales and service facilities that are related to upkeep, repair, and cleanliness.

Section 320.64(25), F.S., provides 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.

Transfer of Interest in a Franchise

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.

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 DHSMV to be published in the Florida Administrative Weekly. 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.

DHSMV must review the notice and may object to the addition or relocation if certain criteria exist. DHSMV denials remain in effect for 12 months.[2] The agency may deny the request if

[1] Black's Legal Dictionary, 7th ed., defines conclusive presumption to mean "a presumption that cannot be overcome by any additional evidence or argument."

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 11 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.[3] “Service only” locations must be noticed, but are subject to limited protests.

Warranty Responsibilities

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 already were. This section was further amended during the 2008 legislative 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 3 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 per 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.

Several of the provisions of the 2008 legislation led to litigation being filed by the Alliance of Automobile Manufacturers and the Florida Automobile Dealers Association over the summer, and both sides are attempting to negotiate a settlement.[4] Some of the litigated issues are addressed in CS/CS/SB 2630.

III. Effect of Proposed Changes:

Section 1 amends s 320.64, F.S., which specifies actions that may lead DHSMV to deny, suspend, or revoke the state license of a vehicle manufacturer, distributor, or importer (licensee). The section adds or elaborates upon five situations related to automobile franchise agreements between licensees and the auto dealers who sell their products. Specifically:

[2] Section 320.642(4), F.S.
[3] Section 320.642(5), F.S.
[4] Interviews with Ted L. Smith, representing the Florida Automobile Dealers Association (March 27, 2009) and Wade Hopping, representing the Alliance of Automobile Manufacturers (March 30, 2009).

- Subsection (5) is amended to prevent a licensee from coercing a motor vehicle dealer into involuntarily ordering or accepting motor vehicles, parts, accessories, or other commodities or 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 current and foreseeable market demand.
- Subsection (10) generally is amended to provide additional criteria for incentives and financial support from a licensee to a dealer for relocation relief:
    - Paragraph (a) prevents a licensee from requiring a dealer to relocate, expand, improve, remodel, renovate, or alter previously approved facilities unless *the licensee can demonstrate* its requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations and the motor vehicle dealer's market for the licensee's motor vehicles.
    - Paragraph (b) clarifies a licensee may agree, in writing, to supply additional vehicles, consistent with the licensee's allocation obligations at law and with the licensee's commitment to other same line-make motor vehicle dealers, or to provide a lump sum as an inducement to remodel or renovate his facilities, as long as the provisions of the commitment and economic and market reasons and basis for them are contained in a written agreement and voluntarily entered into by the dealer. This inducement also must be available on substantially similar terms, for any of the licensee's same line-make dealers in Florida who voluntarily agree to make substantially similar facility expansion, improvement, remodeling, alteration or renovation.
    - Paragraph (c), includes that a licensee may not take or threaten to take any action that is discriminatory to other same line-make Florida dealers who do not enter into an agreement. A licensee is not required to provide financial support for a relocation of a motor vehicle dealer, because such support was previously provided to other same line-make dealers who relocated.
    - Paragraph (d) provides that except for a program, bonus, incentive, or other benefit offered by a licensee to its dealers in a market area where the licensee's unrealized sales potential or other market conditions, compared to its competitors' sales of vehicles, justifies the licensee's offers, a licensee cannot selectively offer incentive programs to dealers in Florida, other regions, or other states.
    - Paragraph (f) allows a licensee to offer programs for a bonus, incentive, or other benefit to its dealers in Florida that contain rules, criteria, or eligibility requirements relating to a motor vehicle dealer's facilities and non-facility-related eligibility provisions. However, if any portion of the licensee-offered programs contains any qualifying rule, criteria, or eligibility requirement relating to a dealer's relocation, expansion, improvement, remodeling, renovation, or alteration of a dealer's facility, each of the licensee's dealers in Florida, upon complying with all such qualifying provisions, is entitled to obtain the entire bonus, incentive, or other benefit offered. A dealer who does not comply with the facility-related rules, criteria, or eligibility requirements, but complies with the other program's provisions, is entitled to receive a reasonable licensee-predetermined percentage of the bonus, incentive, or other benefit. A licensee's predetermined percentage unrelated to facilities is presumed "reasonable" if it is

not less than 75 percent of the total bonus, incentive, or other benefit offered under the program.
  - Paragraph (h) provides that any violation of paragraphs (b) – (g) is not a violation of s. 320.70, F.S., and does not subject a licensee to a criminal penalty.
- 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.
- 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, cancellation, or nonrenewal of the dealer's franchise is the result of the bankruptcy or reorganization of a licensee or its common entity, or the termination, elimination, or cessation of the line-make, in addition to the other required payments to the dealer, the licensee, or if it is unable to do so, its common entity, is liable to the motor vehicle dealer for the following:
  - An amount at least equal to the fair market value of the franchise for the line-make, which shall be the greater of the value determined as of the day the licensee announces the action that results in the termination, cancellation, or nonrenewal, and the value determined on the day that is 12 months before that date. In determining the fair market value of a franchise for a line-make, if the line-make is not the only line-make for which the dealer holds a franchise in its dealership facilities, the dealer also is entitled to compensation for the contribution of the line-make to payment of the rent or to covering the dealer's obligation for the fair rental value of the dealership facilities for a specified period. Fair market value of the franchise for the line-make includes only the goodwill value of the dealer's franchise for that line-make in the dealer's community or territory.
  - If the line-make is the only line-make for which the dealer holds a franchise in the dealership facilities, the licensee, or its common entity if the licensee is unable to pay, also must provide that dealer who rents facilities a sum equal to the rent for the unexpired term of the lease or 3 years' rent, whichever is less. Or, if the dealer or its principal owner owns the dealership facilities, the licensee must pay a sum equal to the reasonable fair rental value of the dealership facilities for a period of 3 years as if the franchise were still in existence at the facilities, if the motor vehicle dealer uses reasonable commercial efforts to mitigate this liability by attempting, in good faith, to lease or sell the facilities within a reasonable time on terms consistent with local zoning requirements to preserve the facilities' right to sell and service motor vehicles.
  - Additionally, where the dealer has unsold vehicles and other merchandise that must be returned to the licensee, then the agreed-upon compensation must be paid

by the licensee to the dealer simultaneously with the dealer's return of the merchandise.

Section 2 amends s. 320.642(1), F.S., to *extend* the protest period of an existing franchise dealer from 30 to 45 days after the initial posting in the Florida Administrative Weekly.

CS/CS/SB 2630 amends s. 320.642(2)(a), F.S., to revise the criteria for denial by DSHMV of a request for a motor vehicle dealer's license. The revisions revolve around whether an existing dealer or dealers are providing "adequate competition" and "convenient customer service" in a manner beneficial to the public interest in the community or territory. Any geographic area used as a comparison must be "reasonably similar in demographic traits to the community or territory of the proposed site, including such factors as:

- Age;
- Income;
- Education levels attained; and
- Vehicle size, class, model preference, and product popularity.

Additionally, the comparison area must not be smaller than the largest entire county in which any of the protesting dealers are located. The expectation is that reasonably 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, adequate competition, and convenient customer service, CS/CS/ 2630 adds criteria to include:

- Foreseeable economic projections, financial expectations, availability of reasonable terms and reasonable amounts of credit to prospective customers of both existing and new dealerships ;
- Whether there will likely be a material positive impact and a material benefit to consumers;
- The past and reasonably foreseeable expected growth or decline in population, density of population, and new motor vehicle registrations in the community or territory, as it pertains to a new dealership opening in an area served by an existing dealer or dealers selling the same line-make;
- Anticipated degree of marketing and advertising support, as it pertains to a new dealership opening in an area served by an existing dealer or dealers selling the same line-make; and
- Expectation for a reasonable return on investment, as it pertains to a new dealership opening in an area served by an existing dealer or dealers selling the same line-make.

CS/CS/SB 2630 also amends s. 320.642(3)(a) and (b), F.S., to provide dealers with standing to protest the establishment of an additional dealership. If the addition occurs in a county with a population of more than 300,000 persons, "standing" is defined to mean a dealership that:

- Is located within 15 miles of the proposed dealership site;
- Has registered 20 percent of new vehicle sales within 15 miles of the proposed dealership site; or
- Has performed repairs on the same line-make motor vehicles constituting 15 percent of its total service department sales within 15 miles of the proposed dealer site.

Section 320.642(6)(a), F.S., is amended to reference the above changes.

Additionally, s. 320.642(6)(b), F.S., is amended to specify that the proposed addition or relocation of a service-only dealership is not subject to protest if its radius from all existing motor vehicle dealerships or the same line-make is at least 10 miles (increased from the current 7 miles).

Section 3 amends s. 320.643, F.S., to specify that a licensee, the DHSMV, or a court may not:

- Reject a proposed transfer of a legal, equitable, or beneficial interest in a motor vehicle dealer entity to a trust or other entity, or to any beneficiary thereof, that is established by an owner of any interest in a motor vehicle dealer for estate planning purposes, if the controlling person of the trust or entity, or the beneficiary, is of "good moral character."
- Condition a proposed transfer based on a relocation of, construction of any addition or modification to, or any refurbishing or remodeling of the dealership structure, facility, or building of the existing motor vehicle dealer, or upon any modification of the existing franchise agreement.

During the pendency of any DHSMV or court hearing, the franchise agreement continues in effect. In addition, DHSMV or a court shall use "reasonable efforts" to expedite any requested determination.

Licensees are restricted from delaying their acceptance of a transfer, and if they decide to reject or withhold their approval, that decision must be based on a preponderance of the evidence presented during a hearing.

Section 4 amends s. 320.696, F.S., to reduce from three to two the options for computing reimbursement of warranty work.

For parts, the dealer's compensation shall be the greater of:

- The dealer's arithmetical mean percentage markup over dealer cost for all parts charged to 75 (replacing the current 50) consecutive retail (meaning non-warranty) customer repairs within a 3-month period or, if fewer than 75 retail customers have gotten repair work done over that period, then the arithmetical mean percentage markup over dealer costs for all parts charged to all repair orders; or
- The licensee's highest suggested retail or list price for its parts (unchanged from current law).

For warranty labor work, the dealer's compensation shall be the greater of:

- An hourly rate agreed upon by the dealer and the licensee, or,
- If an agreement on this rate hasn't been reached within 30 days after the dealer's written request to the licensee, the dealer's hourly labor rate for retail customer repairs.

Deleted from both warranty provisions in current law is a third option for determining compensation for warranty parts and labor, which is based on gross markup of the cost of parts over a 2-month period.

In addition, this section clarifies a licensee may not decrease flat-rate times from or establish an unreasonable flat-rate time in its warranty repair manual, warranty time guide, or any other similarly name document, unless the licensee can prove it has improved the technology related to a particular repair, thus reducing the average repair time.

Section 5 provides if any provisions of this act, or its application to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the act, which are severable.

Section 6 provides this act shall take effect upon becoming law.

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. To the extent that CS/CS/SB 2630 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.

The expansion of the distance for which a dealership of the same line-make or service facility can be located may have an effect on dealer density and may result in fewer licensed dealers and service-only facilities.

C. Government Sector Impact:

DHSMV already regulates this industry, so the additional grounds proposed in CS/CS/SB 2630 for regulatory actions should result in no additional state impact. However, it is

possible the DHSMV may have an increase in the number of administrative hearings as a result of the bill.

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 Transportation on March 25, 2009:

- Prevents a licensee from requiring 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 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.
- Provides that 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 3-month period, as it relates to reimbursement of warranty work.
- Deletes one of the options for determining reimbursement for warranty parts and labor.

CS by Commerce Committee on April 6, 2009:

- Clarifies that any commitment the licensee (auto manufacturer) has made to one of its dealers to provide new/more cars or other inducements to expand the dealer's facilities will be in a written form, but not necessarily be in the written agreement (or contract) between the two parties.
- Clarifies that the licensee shall make the agreed-upon payments for returned merchandise simultaneously to the dealer returning that merchandise to the licensee, in cases of termination or non-renewal of a franchise.
- Narrows the DHSMV's consideration of certain factors when asked by a dealer to determine if a licensee is violating the terms of its contract with the dealer, to the circumstance of when the licensee is allegedly planning to add a new dealership within the complaining dealer's territory.
- Restores current law, where a dealer has standing to protest a relocated dealership being moved to within a 12.5-mile radius of his or her dealership.
- Makes CS provisions on markup of warranty parts internally consistent. Current law allows dealers, if they can't reach an agreement with their licensees over the markup, to calculate the markup based on the "arithmetic mean" of the retail parts costs paid by the previous 50 non-warranty customers in the last 90 days, or, if they had fewer than 50 such customers, then the "a.m." of all the customers they did service during that period. The CS changed that to 75 customers in one reference, but overlooked the other. This amendment makes the 75 customers a consistent reference.
- Makes grammatical corrections.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.