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 Judiciary Committee

BILL:	CS/CS/CS/SB 2630
INTRODUCER:	Judiciary Committee, Commerce Committee, Transportation Committee, and Senator Haridopolos
SUBJECT:	Motor Vehicle Dealerships
DATE:	April 23, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	**Fav/CS**
2.	Pugh	Cooper	CM	**Fav/CS**
3.	Treadwell	Maclure	JU	**Fav/CS**
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 that they manufacture, distribute, or import. Existing law provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and regulates numerous aspects of the franchise contracts these businesses enter into to conduct business in the state of Florida.

The bill 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.

Some of the additional 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;
- Providing detailed procedures for dealers to dispute the final amount of the proposed charge-back of the applicant or licensee after all internal dispute resolution processes have concluded;
- Providing a procedure for dealers to dispute charge-backs and other action taken by a manufacturer as a result of the export of a vehicle;
- Specifying that a licensee or the DHSMV may 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"; and
- 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 of the existing motor vehicle dealer, or upon any modification of the existing franchise agreement.

The bill substantially amends the following sections of the Florida Statutes: 320.64, 320.642, 320.643, and 320.696. In addition, the bill 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) that they manufacture, distribute, or import. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

Current law 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.[1]

"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."[2]

[1] Section 320.60(1), F.S.
[2] Section 320.60(14), F.S.

A "franchised motor vehicle dealer" is defined 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)."[3]

Section 320.61(1), F.S, states, in part, "[n]o 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

Existing law 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.[4] There are 37 different criteria 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.

A licensee is prohibited 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.

A licensee is also precluded 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

[3] Section 320.27(1)(c)1., F.S.
[4] Section 320.64, F.S.

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. 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.

A licensee may periodically audit the transactions of a motor vehicle dealer relating to certain financial operations by the dealer.[5] Audits of warranty payments may only be performed by a licensee during the one-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"[6] that the dealer had no actual knowledge that the customer intended to export or resell the motor vehicle.

Transfer of Interest in a Franchise

Current law establishes procedures for requesting and objecting to transfers of franchise agreements, transfers of assets, and changes in executive management control.[7] 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

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.[8] The notice must include:

- The specific location at which the additional or relocated motor vehicle dealership will be

[5] Section 320.64(25), F.S.
[6] BLACK'S LEGAL DICTIONARY, 7th ed., defines conclusive presumption to mean "a presumption that cannot be overcome by any additional evidence or argument."
[7] Sections 320.643 and 320.644, F.S.
[8] Section 320.642(1), F.S.

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; and
- The names and addresses of the dealer and principal investors in the proposed additional or relocated motor vehicle dealership.

The DHSMV must review the notice and may object to the addition or relocation if certain criteria exist. The DHSMV denials remain in effect for 12 months.[9] The agency 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 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.[10] "Service only" locations must be noticed, but are subject to limited protests.

Several of the provisions of the 2008 legislation led to litigation initiated by the Alliance of Automobile Manufacturers and including the Florida Automobile Dealers Association over the summer. Both sides are attempting to negotiate a settlement.[11] Some of the litigated issues are addressed in the bill.

III. Effect of Proposed Changes:

The bill address several issues related to the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, as well as the franchise contracts these businesses enter into to conduct business in the state of Florida. Following is a section-by-section analysis of the bill:

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

Subsection (10) generally is amended to provide additional criteria for incentives and financial support from a licensee to a dealer for relocation relief:

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

- Provides that a manufacturer may require a motor vehicle dealer to relocate without satisfying certain criteria.
- Clarifies that 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 the dealer's facilities, as long as the provisions of the commitment to the dealer 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 a substantially similar facility expansion, improvement, remodeling, alteration or renovation.
- Clarifies that the provisions do not require a licensee to provide financial support for, or contribution to, the purchase or sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle dealer because such support has been provided to other purchases, sales, or relocations.
- Provides that a licensee or its common entity may not take or threaten to take any action that is unfair or adverse to other same line-make Florida dealers who do not enter into an agreement.
- Deletes the provisions of paragraph (d), which provide that a licensee may not refuse to offer a program, bonus, incentive, or other benefit, in whole or in part, to a dealer in this state which it offers to its other same line-make dealers nationally or in the licensee's zone or region in which this state is included. It also deletes the provision prohibiting the licensee from discriminating against a dealer with respect to any program bonus, incentive, or other benefit.[12]
- Deletes the provisions of paragraph (f), which provide that any portion of the licensee-offered programs for a bonus, incentive, or other benefit is based upon or aimed at inducing 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.
- Paragraph (h) provides that any violation of paragraphs (b)-(g) is not a violation of s. 320.70, F.S.,[13] and does not subject a licensee to a criminal penalty.

Subsection (25) is amended to specify 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 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.

[12] Although this provision is deleted, the bill creates subsection (38) governing certain actions by manufacturers related to offers and payments of bonuses, incentives, or other benefit programs to a dealer.

[13] Section 320.70, F.S., provides that any person being a manufacturer, factory branch, or factory representative, who violates any provision of ss. 320.61-320.70, F.S., or who does any act enumerated in s. 320.64, F.S., as a ground for the denial, suspension, or revocation of a license, is guilty of a first-degree misdemeanor.

After all internal dispute resolution processes provided through the applicant or licensee have been completed, the bill provides that the applicant or licensee may give written notice to the dealer of the final amount of its proposed charge-back. Within 30 days after receipt of the notice, the dealer may dispute that amount by filing a protest with the department. If a protest is timely filed, the DHSMV must notify the applicant or licensee of the filing of the protest and the applicant or licensee may not take any action to recover the amount of the proposed charge-back until the DHSMV renders a final determination, not subject to further appeal, that the charge-back is in compliance with these provisions. The licensee bears the burden of proof that its audit and resulting charge-back are in compliance.

Subsection (26) is amended to preclude certain manufacturer sanctions for export of a vehicle unless the licensee proves that the dealer *knew or reasonably should have known* that the customer intended to export or resell the motor vehicle. In addition, the bill changes the conclusive presumption to a rebuttable presumption that the dealer neither knew nor should have known of its customer's intent to export or resell the vehicle if the vehicle is titled or registered in any state in this country.

A licensee may not take action against a dealer, including reducing its allocations or supply of motor vehicles, or charging back a dealer for an incentive payment previously paid, unless the licensee first meets in person, by telephone, or video conference with the dealer or representative of the dealer. At the meeting, the licensee must provide a detailed explanation as to the basis for its claim that the dealer knew or reasonably should have known of the customer's intent to export or resell the motor vehicle. Thereafter, the dealer will have a reasonable period, commensurate with the number of vehicles at issue, but not less than 15 days, to respond to the licensee's claims.

If, following the dealer's response and completion of all other internal dispute resolution processes provided through the applicant or licensee, the dispute remains unresolved, the dealer may file a protest with the DHSMV within 30 days after receipt of a written notice from the licensee that it still intends to take adverse action against the dealer. If a protest is timely filed, the DHSMV must notify the applicant or licensee of the filing of the protest and the applicant or licensee may not take any adverse action until the DHSMV renders a final determination. At the hearing, the licensee bears the burden of proof on all issues.

The bill amends subsection (36) to eliminate the 90-day time limitation for certain payments to a dealer after the effective date of a termination, cancellation, or nonrenewal of any franchise agreement. In addition, the bill alters the 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 result of a licensee's plan, scheme, or policy that is intended to decrease the number of the licensee's franchised dealers of a line-make in this state, or the result of a termination, elimination, or cessation of manufacture or distribution of a 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, or the value determined on the day that is 12 months before that date. 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.

Additionally, the bill provides that, absent shipping instructions and prepayment of shipping costs from the licensee or its common entity, the dealer must tender the inventory and other items to be returned at the dealer's facility. Where the dealer has unsold vehicles and other merchandise that must be returned to the licensee, the agreed-upon compensation must be paid by the licensee to the dealer simultaneously with the dealer's return of the merchandise.

Subsection (38) is created to provide that an applicant is prohibited from failing or refusing to offer a bonus, incentive, or other benefit program to a dealer, which it offers to all of its other same line-make dealers nationally or to all of its other same line-make dealers in the licensee's designated zone, region, or other licensee-designated area of which this state is a part, unless the failure or refusal to offer the program is reasonably supported by substantially different economic or marketing considerations than are applicable to the licensee's same line-make dealers in this state. A licensee is precluded from establishing this state alone as a designated zone, region, or area or any other designation for a specified territory.

A licensee may offer a bonus, rebate, incentive, or other benefit program to its dealers in this state that is calculated or paid on a per vehicle basis and is related in part to a dealer's facility or the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility. Any dealer who does not comply with the facility criteria or eligibility requirements of the program will be entitled to receive a reasonable percentage of the bonus, incentive, rebate, or other benefit offered by the licensee under that program by complying with the criteria or eligibility requirements unrelated to the dealer's facility under the program.[14]

Section 2 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 representation " of line-make motor vehicles in a manner beneficial to the public interest in the community or territory. The bill specifies that adequacy of representation must be measured with respect to the community or territory as a whole and not with respect to any part of any identifiable plot therein.

Section 3 amends s. 320.643, F.S., to specify that a licensee or the DHSMV 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."

[14] For purposes of subsection (38), the bill provides that the percentage unrelated to the facility criteria or requirement is presumed to be "reasonable" if it is not less than 80 percent of the total of the per vehicle bonus, incentive, rebate, or other benefits offered under the program.

- 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, except for the change of ownership.

The bill provides that a licensee may not reject or withhold approval of a proposed transfer unless the licensee can prove in court that the rejection or withholding of approval of the proposed transfer was reasonable *and was not in violation of or precluded by* any provision in s. 320.643, F.S.

Section 4 amends s. 320.696, F.S., relating to the options for computing reimbursement of warranty work. The bill revises the provision in current law specifying that a licensee may not seek to recover compensation for warranty work either directly or indirectly by deleting the specific references to the following activity by a licensee:

- Decreasing or eliminating any bonuses or other incentive that the licensee has in effect nationally, regionally, or in a territory by any other designation;
- Reducing the dealer's gross margin for any of the licensee's products or services where the wholesale price charged to the dealer is determined by the licensee and the reduction is not in effect nationally or regionally;
- Imposing a separate charge or surcharge to the wholesale price paid by a dealer in this state for any product or service offered to or supplied by a licensee under a franchise agreement with the dealer; or
- Passing on to the dealer any charge or surcharge of a common entity of the licensee.

As a result of the deletions, the statute will contain a general provision precluding a licensee from recovering or attempting to recover, directly or indirectly, any costs associated with compensating a motor vehicle dealer for warranty work.

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 that this act will 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:

The fiscal impact of this bill to private individuals and motor vehicle dealers has not been determined. Motor vehicle dealers are likely to be impacted by revisions to procedures related to relocation. Dealers may experience increased revenue from new limitations and procedures governing the incentives, bonuses, and other benefit programs.

C. Government Sector Impact:

The Division of Highway Safety and Motor Vehicles (DHSMV) already regulates this industry, so the additional grounds proposed in the bill for regulatory actions should result in no additional state impact. However, it is possible the DHSMV may experience 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/CS/CS by Judiciary on April 21, 2009:
The committee substitute:

- Removes the revisions in the bill preventing a licensee (auto manufacturer) from coercing a dealer into ordering or accepting motor vehicles, parts, or accessories that are in excess of that number which the motor vehicle dealer considers as reasonably required to adequately represent the licensee's line-make in order to meet current and foreseeable market demand;
- Provides that a manufacturer may require a motor vehicle dealer to relocate without satisfying certain criteria;

- Clarifies certain language relating to incentive and other benefit programs by a creating a new provisions governing offers and payments of these programs;
- Reduces the number of days an applicant or licensee has after the conclusion of a timely conducted audit to provide new information supporting a change to the basis for each of the proposed charge-backs from 60 to 30 days;
- Provides detailed procedures for dealers to dispute the final amount of the proposed charge-back of the applicant or licensee after all internal dispute resolution processes have concluded;
- Requires that a dealer know or reasonably should have known that a customer intended to export or resell a motor vehicle before a licensee can take certain action;
- Replaces the conclusive presumption in current law with a rebuttable presumption that that a dealer neither knew nor reasonably should have known of its customer's intent to export or resell the vehicle if the vehicle is titled or registered in any state in this county;
- Provides a procedure for dealers to dispute charge-backs and other action taken by a manufacturer as a result of the export of a vehicle;
- Eliminates the 90-day time limitation in current law for certain payments to a dealer by a manufacturer after the effective date of a termination, cancellation, or nonrenewal of any franchise agreement;
- Revises the provisions of the bill relating to the amounts due to a dealer if a manufacturer terminates, cancels, or fails to renew a dealer's franchise;
- Revises the provisions of the bill relating to the procedures for returning property after termination, cancellation, or nonrenewal of a franchise, including prepayment of shipping costs;
- Restores the original 30-day protest period of an existing franchise dealer contained in current law after the initial posting in the Florida Administrative Weekly;
- Restores the original criteria in current law for denial by DSHMV of a request for a motor vehicle dealer's license by removing criteria related to comparisons of geographic areas and demographic traits;
- Clarifies the existing statute by requiring the manufacturer to use the proper territory to evaluate adequacy of representation by an existing dealership;
- Restores the original criteria in statute relating to determinations of whether the existing franchised dealers are providing adequate representation;
- Restores the standing provisions in current law for protesting the establishment of an additional dealership;
- Removes the requirement from the bill that if a licensee delays acceptance of a transfer, or rejects or withholds approval, that decision must be based on a preponderance of the evidence presented during a hearing;
- Restores the provisions in current law relating to the options for computing reimbursement of warranty work;
- Specifies how adequacy of representation is to be measured with regard to applications for a dealer license in any community or territory; and
- Revises current provisions of law relating to a manufacturer's efforts to recover or attempt to recover costs for warranty responsibility.

CS/CS by Commerce on April 6, 2009:
The committee substitute:

- 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 Division of Highway Safety and Motor Vehicle'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 provisions in the committee substitute regarding the 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 committee substitute changed that to 75 customers in one reference, but overlooked the other. This amendment makes the 75 customers a consistent reference.
- Makes grammatical corrections.

CS by Transportation on March 25, 2009:
The committee substitute:

- 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.

B. Amendments:

None.