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 Banking and Insurance Committee

BILL: CS/SB 740

INTRODUCER: Transportation Committee and Senator Negron

SUBJECT: Motor Vehicle Licenses

DATE: March 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	**Fav/CS**
2.	Knudson/Arzillo	Burgess	BI	**Favorable**
3.			BC	
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 Department of Highway Safety and Motor Vehicles (DHSMV) held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act (ss. 320.60-320.071, F.S.) do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. DMV-09-0935 (Fla. DOAH 2009). The Petitioner appealed the final order to the First District Court of Appeal, but ultimately voluntarily dismissed the appeal. The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

The bill amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when: (1) they are included in single franchise agreement; and (2) every motor vehicle dealer in Florida authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. However, such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.

The bill amends s. 320.6992, F.S., to provide for the application of ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., to all existing or subsequently established systems of distribution of motor vehicles in the state unless such application would impair valid contractual agreements in violation of the State or Federal Constitution. All agreements amended subsequent to October 1, 1988, are governed by ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

This bill substantially amends the following sections of the Florida Statutes: 320.60 and 320.6992.

II. Present Situation:

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. 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]

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)."

Section 320.60(14), F.S., defines "line-make vehicles" as 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.

The requirements regulating the business relationship between franchised motor vehicle dealers and licensees by the DHSMV are primarily in ss. 320.60-320.070, F.S., (the Florida Automobile Dealers Act).[3] 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.

Section 320.6992, F.S., provides this act [Florida Automobile Dealers Act] shall apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. The provisions of this act shall not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed or entered into subsequent to October 1, 1988, shall be governed hereby.

The DHSMV recently held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. DMV-09-0935 (Fla. DOAH 2009). The Petitioner appealed the final order to the First District Court of Appeal, but ultimately voluntarily dismissed the appeal. In this holding, the DHSMV ruled the 2006 amendment to the Florida Automobile Dealers Act which requires that if a dealer's franchise agreement is terminated the manufacturer must buyback from the dealer its unsold vehicles, parts, signs, special tools, and other items, does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment.

The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

III. Effect of Proposed Changes:

The bill amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when: (1) they are included in single franchise agreement; and (2) every motor vehicle dealer in Florida authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. However, such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.

The bill amends s. 320.6992, F.S., to provide for the application of ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., to all existing or subsequently established systems of distribution of motor vehicles in the state unless such application would impair valid

contractual agreements in violation of the State or Federal Constitution. All agreements amended subsequent to October 1, 1988, are governed by ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Currently section 320.6992, F.S., states that the "act" applies Article 1, section 10 of the Florida Constitution states, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." Consequently courts generally disfavor retroactivity in the law.[1] Therefore, in the absence of a clear legislative intent to the contrary, a law is presumed to act prospectively.[2] However, if clear evidence of legislative intent to apply a statute retroactively exists, the court must perform a constitutional inquiry into whether the retroactivity is permissible.[3]

The determination of legislative intent to apply a statute retroactively was examined in *State Farm Mutual Auto. Insurance, Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995). The amendment in *Laforet* specifically stated that it "shall apply to all causes of action accruing after the effective date of section 624.155, Florida Statutes."[4] Therefore, the intent of the Legislature was clear, that the amendment was intended to apply retroactively to the effective date of the statute that the amendment clarified. If the intent of the legislature is clear, as it was here, the analyses moves to the constitutionality of the retroactive statute.

[1] *See* Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).
[2] *See* Bates v. State, 750 So. 2d 6 (Fla. 1999).
[3] *See* Menendez v. Progressive Express Insurance Co., 35 So. 3d 873 (Fla. 2010). *See also* Smiley v. State, 966 So. 2d 330 (Fla. 2007).
[4] Laws of Fla. ch. 92-318, 80.

The assessment of constitutionality of the retroactive statute comes down to whether the statute is substantive or procedural. The courts have emphasized that "even where the Legislature has expressly stated that a statute will have retroactive application, [the] Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[5] In other words, if a statute affects substantive rights, courts will not apply the statute retroactively. However, if the statute is procedural, meaning it does not create new rights or obligations, courts will allow for retroactive application upon clear legislative intent.[6]

A statute affecting substantive rights may be applied retroactively if it serves to clarify a recently enacted statute and does not attach "new legal consequences to events completed before its enactment."[7] For example, in *Lowry v. Parole and Probation Commission*, 473 So. 2d 1248, 1250 (Fla. 1985), the court held that "[w]hen . . . . an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof." In *Lowry*, the amendment clarified the parole release date calculations for prisoners serving consecutive sentences. The court found that the statute was an interpretation by the Legislature of a previous statute; therefore, it was not a substantive amendment.

However, this is limited by the court in *Laforet*. As explained above, in *Laforet*, the amendment clearly stated its retroactive application. Nevertheless, the amendment came more than ten years after the date the original statute was enacted.[8] Therefore, the court held that the Legislature had waited too long before clarifying the statute, and that "it would be absurd . . . . to consider legislation enacted more than ten years after the original act as a clarification of original intent."[9] Consequently, courts view the passage of time, between the enactment of the original statute and the amendment, negatively.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[5] *State Farm Mutual Auto. Insurance, Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).
[6] *See* Benyard v. Wainwright, 322 So. 2d 473, 475 (Fla. 1975). *See also City of Lakeland v. Catinella, 129 So. 2d 133 (Fla. 1961).*
[7] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494, 499 (Fla. 1999).
[8] *See* note 5.
[9] *Id*. at 62.

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 9, 2011:

- Redefines the term "line-make vehicles" to clarify circumstances under which vehicles sold or leased under multiple brand names or marks constitute a single line-make; and specifies such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.
- Provides an exception to the application of ss. 320.60 – 320.70, F.S., on all amended agreements to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

B. Amendments:

None.