

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 783 Motor Vehicle Sales

SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Albritton and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Emmanuel	Cooper
2) Regulatory Affairs Committee	16 Y, 0 N, As CS	Emmanuel	Hamon

SUMMARY ANALYSIS

Currently, when an individual buys a motor vehicle, the dealer may offer additional automotive products such as an extended warranty, guaranteed asset protection, a maintenance package, dent repair, or tire protection. These arrangements are generally financed through third parties or the automotive manufacturer's captive financial entity. Typically, the automotive manufacturer's captive finance company is also the institution that is financing the vehicle and the warranty. Because of this arrangement, the manufacturer's captive automotive financial institution might have more leverage than third parties in offering their aftermarket automotive product on the consumer.

The bill creates s. 545.045, F.S., to prohibit an automotive manufacturer's finance company from denying or charging a fee solely because the contract contains an automotive-related product from a competitor that is of "similar nature, scope, and quality".

The bill defines "affiliated finance company", "automotive related product", "third party provider", and "vehicle contract" for the statute.

The bill also removes the definition of "motor vehicle broker" found in s. 320.27, F.S.

The bill has no fiscal impact on the state or on local governments and an indeterminate impact on the private sector.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Many automotive manufacturers have captive finance companies.¹ For example, Ford Motor Company has Ford Credit² and Toyota has Toyota Financial.³ Other automotive manufactures may have preferred arrangements with a single bank, like Fiat has with Ally Bank.⁴ These captive finance companies work directly with the manufacturers to finance the purchase of motor vehicles and manufacturer's warranties. The ultimate terms of the finance agreement can have a significant impact on the ultimate price paid by the consumer. In Florida, each new car dealership is a franchised outlet for a particular automotive manufacturer. Under the current statutory scheme, automotive manufacturers are not able to sell vehicles directly to consumers in Florida.

Currently, Chapter 545, F.S., regulates some combinations in regards to restricting the financing of motor vehicles, and is enforced by the Attorney General.⁵ The chapter prohibits manufacturers and whole distributors of motor vehicles from requiring motor vehicle dealers to use only designated finance companies, such that the restriction would create a monopoly by the designated finance company.⁶ The chapter also prohibits manufacturers and distributors from using threats or giving anything of value to any particular finance company that would lessen or eliminate competition. In addition to the Attorney General's enforcement authority, a violation of this chapter is a second-degree misdemeanor and may also result in civil damages for an injured business.⁷

Many vehicles come with a manufacturer's warranty, which is the manufacturer's legal responsibility to stand behind its product, and is included in the price of the product.⁸ In addition to the car itself, the consumer typically has the option to purchase a myriad of motor vehicle service agreements and other automotive related products from the manufacturer's affiliates as well as from third-party companies. These decisions are made completely independently of any additional features or customization of the car, and do not include any physical asset. Recently, it has been discovered that some exclusionary financing practices have occurred with the purchase of these additional automotive-related products. At least one car manufacturer has gone on record stating that they have placed some requirements for the purchase of automotive related products on their dealerships:

'[Volkswagen of America] does not require VW or Audi dealers to exclusively sell or finance its ancillary products, with one exception . . . The one exception is the Lease Excess Wear Protection product, because it represents a waiver of certain lease contract terms, and we are the only party authorized to make such waivers. This practice is customary amongst captive lenders for this type of product and has been part of VCI's product since introduction approximately 2 1/2 years ago."⁹

This practice is viewed by some as enabling manufacturers to bundle the purchase of the car and manufacturer's warranty with the automotive related products.

¹ "Most Car Companies Want Their Own Finance Company So They Have A Place To Go Home To." Jim Henry. *Forbes*, October 31, 2012. (accessed Mar 21, 2013) available at <http://www.forbes.com/sites/jimhenry/2012/10/31/most-car-companies-want-their-own-finance-company-so-they-have-a-place-to-go-home-to/>

² <http://credit.ford.com/>

³ <http://www.toyotafinancial.com/>

⁴ See "Our History" Ally Bank. available at <http://www.ally.com/about/company-structure/history/>

⁵ s. 545.08, F.S.

⁶ s. 545.02, F.S.

⁷ ss. 545.08-545.12, F.S.

⁸ "Extended Warranties and Service Contracts" Consumer Information, Federal Trade Commission. Accessed Mar 3, 2014. available at <http://www.consumer.ftc.gov/articles/0240-extended-warranties-and-service-contracts>

⁹ "Dealers, captive battle in statehouses" Jim Henery, *Automotive News*. Mar 19, 2014, accessed Mar 21, 2014. available at http://www.autonews.com/article/20140319/FINANCE_AND_INSURANCE/303199986/dealers-captives-battle-in-statehouses

The Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) may, within their respective regulatory jurisdictions, examine and investigate every person involved in the business of motor vehicle service agreements (which provide vehicle owners with protection when the manufacturer's warranty expires) in this state to determine whether such person is engaged in any unfair method of competition or in any unfair or deceptive acts or practices that are prohibited by s. 634.282, F.S.¹⁰ The OIR conducts financial examinations of motor vehicle service agreement companies as required under part II of ch. 634, F.S. The OIR may examine the companies as often as may be warranted for the protection of policyholders and the public interest, but must examine each company once every 5 years.¹¹

Additionally, the Office of Financial Regulation (OFR) administers and enforces ch. 520, F.S., the Motor Vehicle Retail Sales Finance Act, which includes licensing and enforcement authority over motor vehicle retail installment sellers and sales finance companies. This act prohibits any motor vehicle retail installment seller, sales finance company, retail lessor, or assignee from requiring the purchase of a guaranteed asset protection (GAP) product as a condition for making a loan, and requires certain conditions and disclosures prior to the offer of any GAP product.¹²

There is nothing in current law that prohibits the manufactures from incentivizing their automotive related products over those of a third party through fees or penalties on the dealership.

Chapter 320, F.S., regulates motor vehicle licenses and licensure. Currently, the chapter does not define "motor vehicle broker" for the purposes of licensure.¹³ The only mention of "motor vehicle broker" in the Florida Statutes is in s. 320.27, F.S., which states that "motor vehicle brokers" are not "motor vehicle dealers" for the purposes of Ch. 320, F.S. For the purposes of s. 320.27, F.S., only, a "motor vehicle broker" is defined as any person engaged in the business of offering to procure or procuring motor vehicles for the general public, or who holds himself or herself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles for the general public, and who does not store, display, or take ownership of any vehicles for the purpose of selling such vehicles.¹⁴

Effect of the Bill

The bill creates a definition in s. 545.01, F.S., to define "automotive related products" as a service agreement as defined in s. 634.011, F.S., or a guaranteed asset protection product, as defined in s. 520.02, F.S., or other ancillary product that is purchased or otherwise provided at the point of sale or lease of the motor vehicle. These products include:

Motor vehicle service agreements – These agreements are currently defined in s. 634.011, F.S., as "any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended." Section 634.011, F.S., is within the motor vehicle service agreement act, described above, that the DFS and the OIR administer and enforce.¹⁵

Extended warranty agreements – These contracts provide for specified repair and maintenance on a product for a set amount of time or use.¹⁶ Extended warranties are

¹⁰ s. 634.283, F.S.

¹¹ s. 634.141, F.S.

¹² ss. 520.07(11) and 520.994, F.S., relating to requirements and prohibitions as to retail installment contracts and powers of the OFR.

¹³ See s. 320.01, F.S.

¹⁴ s. 320.01(d), F.S.

¹⁵ Part I of ch. 634, F.S., relates to motor vehicle service agreement companies. Section 634.021, F.S., empowers the OIR to administer this part, and the DFS is empowered to enforce it as it relates to sales representatives.

¹⁶ "Extended Warranties and Service Contracts" Consumer Information, Federal Trade Commission. Accessed Mar 3, 2014.

available at <http://www.consumer.ftc.gov/articles/0240-extended-warranties-and-service-contracts>

purchased in conjunction with the purchase of the product and are priced separately. Other maintenance packages including dent repair and tire protection.

GAP protection – GAP is an optional product that pays the difference between the amount owed on a vehicle and the amount the insurance company would pay if the vehicle is stolen or destroyed before the credit obligation is completed.¹⁷ Section 520.02, F.S., defines GAP as a “guaranteed asset as a loan, lease, or retail installment contract term, or modification or addendum to a loan, lease, or retail installment contract, under which a creditor agrees to waive a customer’s liability for payment of some or all of the amount by which the debt exceeds the value of the collateral. Such a product is not insurance for purposes of the Florida Insurance Code.”¹⁸ This insurance-like product ensures that a consumer would not have to pay car payments on a destroyed or stolen car. Section 520.02, F.S., is within the Motor Vehicle Retail Sales Finance Act, described above, which is administered and enforced by the OFR.

The bill also defines “third party provider” and “affiliated insurance company” for the purposes of this statute. A third party provider is defined as a provider of an automotive related product that is not an affiliated finance company, manufacturer, or wholesale distributor. An affiliated finance company is defined as a company that is affiliated with or controlled by a manufacturer or wholesale distributor through common ownership, officers, directors, or management, or that has a contractual agreement to represent a manufacturer or wholesale distributor with respect to financing the sale or lease of motor vehicles.

The bill creates s. 545.045, F.S., to prohibit an affiliated insurance company from denying financing or charging the dealer a fee solely because the contract contains an automotive-related product from a third party provider that is of “similar nature, scope, and quality”. The bill only applies if the third party automotive related product contained in the vehicle contract is of “similar nature, scope, and quality” as one offered by the finance company or the manufacturer. Two factors that may be used to determine if a product is of similar nature, scope, and quality are the financial capacity of the third party provider and the third party provider’s history of compliance with applicable state and federal rules.

Violations of this section would not be a criminal offense.

The bill also removes the definition of “motor vehicle broker” from s. 320.27, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 545.01, F.S., relating to definitions.

Section 2. Creates s. 545.045, F.S., relating to the purchase or assignment of automotive financing.

Section 3. Strikes portions of 320.27, F.S., relating to definitions.

Section 4. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹⁷ “Understanding Vehicle Financing” Consumer Information, Federal Trade Commission. Accessed Mar 3, 2014. *available at* <http://www.consumer.ftc.gov/articles/0056-understanding-vehicle-financing>

¹⁸ s. 520.02(7), F.S.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill prohibits finance companies from making their product more favorable to consumers by penalizing the dealer or denying financing on a new car purchase. To the extent that this bill changes the current regulatory environment, there may be an indeterminable change in prices for these automotive related products.

The proponents claim that this change will increase competition and consumer choice. The automotive manufactures have gone on record in opposition to this bill, believing that it unfairly ties the hands of their financial institutions to incentivize their own product.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Insurance & Banking Subcommittee adopted a strike-all amendment and an amendment to the strike-all. In addition to conforming changes, the amended strike-all changed the following:

- Removed the provision which prohibited a manufacturer's financial institution from adjusting the rates of an automotive loan based on whether or not the consumer purchased an "automotive related product" from a third party;
- Changed the applicability of the statute to those products that are of "similar nature, scope, and quality";
- Added factors to determine whether an automotive related product is of similar nature, scope, and quality; and
- Added definitions for an "affiliated finance company" and a "third party provider".

On April 3, 2014, the Regulatory Affairs Committee adopted two amendments and reported the bill favorably. The amendments removed the definition of “motor vehicle broker” from Chapter 320, F.S., and made conforming changes to the title of the bill.

The staff analysis is drafted to reflect the bill as passed by the Regulatory Affairs Committee.