HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 231 Motor Vehicle Manufacturer Licenses
SPONSOR(S): Judiciary Committee; Business & Professions Subcommittee; Trujillo
TIED BILLS: None **IDEN./SIM. BILLS:** SB 430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 1 N, As CS	Anderson	Anstead
2) Judiciary Committee	17 Y, 0 N, As CS	Aziz	Havlicak

SUMMARY ANALYSIS

The bill provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer, factory branch, distributor, or importer ("manufacturer"). The bill prohibits manufacturers from taking certain actions against motor vehicle dealers and requires certain procedures be followed by the manufacturer when dealing with motor vehicle dealers. Specifically, the manufacturer:

- Is limited to a 12-month period following the date a claim was paid to perform audits of warranty, maintenance, service-related payments and incentive payments and can only deny such a claim if the manufacturer proves that the claim is false or fraudulent;
- May not take adverse action against a motor vehicle dealer due to a delivered motor vehicle being resold or exported by the customer unless the manufacturer provides written notification to the dealer within 12 months;
- Must pay a dealer for temporary replacement vehicles provided to customers during service or repair provided the dealer complies with the manufacturer's written vehicle eligibility requirements relating to loaner vehicles; and
- May not require or coerce a dealer to purchase goods or services from a vendor selected by the manufacturer without first making available to the dealer the option to obtain the goods or services from a vendor chosen by the dealer.

The bill has an indeterminate fiscal impact on state government.

The bill shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Manufacturers and Franchise Dealerships – Generally:

Manufacturers, distributors, and importers ("manufacturers") enter into contractual agreements with motor vehicle dealers to sell particular vehicles that they manufacture, distribute, or import. Florida law, chapter 320, F.S., has regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Existing law requires the licensing of motor vehicle manufacturers, and regulates numerous aspects of the contracts between manufacturers and motor vehicle dealers.

Section 320.64, F.S., currently provides thirty-eight grounds for the denial, suspension, or revocation of the license of a manufacturer.

Section 320.61(1), F.S, states, in part, "[n]o manufacturer, factory branch, distributor, or importer shall engage in business in this state without a license therefor … ." Section 320.61(2), F.S., allows the Department of Highway Safety and Motor Vehicles ("DHSMV") to prescribe renewal applications pursuant to s. 320.63, F.S., which requires a manufacturer to submit the following documents to determine fitness:

- Information relating to solvency and financial standing;
- A certified copy of any warranty connected with the motor vehicles sold or any component;
- A copy of the written agreement and all supplements thereto between the motor vehicle dealer and the manufacturer;
- A list of authorized dealers or distributors and their addresses;
- An affidavit acknowledging that the provisions of an agreement are not contrary to the provisions contained in ss. 320.60-320.70, F.S.;
- A certified copy of all applicable preparation and delivery charge obligations of the dealer;
- An affidavit stating the rates which the manufacturer pays or agrees to pay any authorized motor vehicle dealer licensed in this state for the parts and labor advanced or incurred by such authorized motor vehicle dealer for or on account of any delivery and preparation obligations imposed on its dealers or relating to warranty obligations;
- An annual license fee; and
- Any other information needed to safeguard the public interest which DHSMV may, by rule, prescribe.

The requirements regulating the contractual business relationship between a motor vehicle dealer and a manufacturer are primarily found in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).[1] These sections of law specify, in part:

- The conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- The process, timing, and notice requirements for manufacturers 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 manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV's role in these circumstances;
- Amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

[1]Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf.

Prohibitions for Manufacturers - Current Situation:

There are currently 38 different criteria that could lead the DHSMV to take action against a motor vehicle manufacturer. A violation of any of these provisions entitles a motor vehicle dealer to rights and remedies contained within the Florida Automobile Dealers Act, including an administrative protest, obtaining an injunction against the manufacturer, and receiving treble damages and attorney's fees, if the manufacturer is found to have violated the Act.

A manufacturer 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 manufacturer is precluded from requiring a dealer to relocate, expand, improve, remodel, renovate, or alter previously approved facilities unless the requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and market.

A manufacturer cannot withhold a bonus or other incentive that is available to its other same line-make Florida dealers if the manufacturer offers to enter into an agreement or to selectively offer incentive programs to dealers in Florida, other regions, or other states. A manufacturer may not discriminate against a dealer with respect to a program, bonus, incentive, or other benefit within a zone or region that includes Florida.

A manufacturer 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 during the one-year period immediately following the date a warranty claim was paid. Audits of incentive payments may only be performed 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 manufacturer if the dealer distributes cars for foreign export. This section provides that, in a legal challenge, the manufacturer 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"[2] that the dealer had no actual knowledge that the customer intended to export or resell the motor vehicle.

Prohibitions for Manufacturers - Effect of Proposed Changes:

The bill address several issues related to motor vehicle manufacturers, distributors, and importers, and the franchise contracts between these businesses and motor vehicle dealers.

The bill amends s. 320.64, F.S., to specify that a manufacturer is prohibited from committing certain actions against motor vehicle dealers and requires certain procedures be followed by the manufacturer when dealing with motor vehicle dealers. The bill amends three existing provisions and adds three additional provisions. Specifically, the manufacturer:

- Is limited to a 12-month period following the date a claim was paid, pursuant to warranty provisions, to perform audits of warranty, maintenance, other service-related payments and incentive payments;

- May not deny or charge back any payment related to a warranty, maintenance, or other service-related claim or incentive claim or a portion of such claim, until the manufacturer has "proven" the

[2] BLACK'S LAW DICTIONARY, p. 263 (5th ed. 1979) (Defines conclusive presumption to mean "a presumption that cannot be overcome by any additional evidence or argument.").

claim or portion of such claim to be false or fraudulent or that the dealer failed to substantially comply with the reasonable, written, and uniformly applied procedures of the manufacturer;

- May not take adverse action against a motor vehicle dealer due to a motor vehicle being resold or exported by the customer unless the manufacturer provides written notification to the dealer of such resale or export within 12 months;

- Must pay the dealer for temporary replacement vehicles provided to customers by the dealer as a loaner vehicle during service or repair even if the dealer owns the vehicle, provided that the dealer complies with written and uniformly enforced vehicle eligibility requirements; and

- May not require or coerce a dealer to purchase goods or services from a vendor selected by the manufacturer without first making available to the dealer the option to obtain the goods or services from a vendor chosen by the dealer and may not unreasonably withhold consent to allow the dealer to use alternative goods or services. The term "goods or services" does not include material subject to applicant's or licensee's copyright, trademark, or trade dress rights; required special tools or training; parts to be used in repairs; goods or services paid for entirely by the manufacturer; or a manufacturer's architectural review service.

B. SECTION DIRECTORY:

Section 1 amends s. 320.64, F.S., relating to denial, suspension, or revocation of license.

Section 2 provides that the bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DHSMV already regulates this industry, so the additional grounds proposed in the bill for regulatory actions may result in no additional state impact. However, it is possible DHSMV may experience an increase in the number of administrative hearings as a result of the bill. DHSMV anticipates that it may experience a positive impact on its revenues from the collection of additional motor vehicle dealer fees if lesser regulation on motor vehicle dealers leads to more motor vehicle dealers being in business.[3] The bill may have an indeterminate fiscal impact.[4]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[3] Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2016 House Bill 231, p. 5 (Oct. 19, 2015).
[4] *Id*.

To the extent the agreements between dealers and motor vehicle manufacturers, distributors, and importers change due to compliance with existing laws, the parties may be positively or negatively impacted. Dealers may experience increased revenue from new limitations and procedures governing the incentives, bonuses, and other benefit programs. The bill may make it easier and more affordable for dealers to comply with manufacturer's requirements which, in turn, may make it easier for new dealership franchises to open and for current dealership franchises to remain in business.[5]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The Federal Contracts Clause provides that no state shall pass any law impairing the obligation of contracts. U.S. Const. art I s. 10. However, the Contracts Clause prohibition must be weighed against the State's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.[6]

Some state laws regulating contracts between automobile manufacturers and dealers have been found to have violated the constitution while other laws have been upheld as constitutional.[7]

B. RULE-MAKING AUTHORITY:

The DHSMV already regulates this industry, and has rulemaking authority. The additional grounds proposed in the bill for regulatory actions may result in some additional rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 2, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes language that would have prohibited a manufacturer from refusing to pay a dealer who participated in a bonus program related to facility improvements or signs any increase in benefits between the program that the dealer participated in and a new program offered within 10 years that the dealer does not participate in; and
- Deletes language that would have prohibited a manufacturer from requiring a motor vehicle dealer to participate in a dealer advertising or marketing pool, threatening to take adverse action against

[5] *Id*. at p. 3.
[6] *Vesta Fire Ins. Corp. v. State of Fla.,* 141 F.3d 1427, 1433 (11th Cir. 1998).
[7] *See Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe Motors, Inc. v. Gen. Motors Corp*., No. CIV.A. 99 N 1985, 2001 WL 36400171, at 13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

the dealer for refusing to do so, and precluding a motor vehicle dealer from establishing a voluntary motor vehicle dealer advertising or marketing pool.

On February 25, 2016, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that goods and services do not include any materials subject to applicant's or licensee's copyright, trademark, or trade dress rights; and
- Deletes the retroactivity and severability sections of the bill.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.