HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 1175	**FINAL HOUSE FLOOR ACTION:**			
SUBJECT/SHORT TITLE	Motor Vehicle Manufacturers and Dealers	104	**Y's**	12	**N's**
SPONSOR(S):	Commerce Committee, Careers & Competition Subcommittee and Diaz, M.	**GOVERNOR'S ACTION:**		Approved	
COMPANION BILLS:	CS/SB 1678				

SUMMARY ANALYSIS

CS/CS/HB 1175 passed the House on April 26, 2017, and subsequently passed the Senate on May 5, 2017.

Existing law requires the licensing of motor vehicle manufacturers, and regulates numerous aspects of the contracts between manufacturers and motor vehicle dealers.

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 bill prohibits 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
- Implementing performance-measuring criteria that may have a material or adverse effect on a dealer, that are unfair, unreasonable, arbitrary, or inequitable, or do not include all relevant criteria, data, and facts.

The bill reenacts a number of statutes for the purpose of incorporating the changes made by the bill to s. 320.64, F.S.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 26, 2017, ch. 2017-187, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

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 forty 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. 320.60-320.070, 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 law; 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://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr

Prohibitions for Manufacturers

There are currently 40 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 attempting to enter or entering into a franchise agreement with a dealer who does not have the proper facilities to provide services necessary to provide for new vehicle warranties.

A manufacturer may not require a dealer to make substantial changes to the dealer's sales or services facilities that are not considered reasonable or justified in light of current and foreseeable economic conditions, financial expectations, and the dealer's market for the manufacturer's motor vehicles.

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless the amendment specifically provides otherwise. [2]

Procedure for Administrative Hearings and Adjudications

A dealer who is directly and adversely affected by the action or conduct of a manufacturer which is alleged to be in violation of the Act may seek a declaration and adjudication of its rights by either filing a request with DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with DHSMV.[3]

Civil Damages

If a dealer can demonstrate that a manufacturer has violated or failed to comply with any of the manufacturer prohibitions under s. 320.64, F.S., and that the violation will or can adversely and pecuniarily affect the dealer, the dealer is entitled to pursue an injunction against the manufacturer, treble damages, and attorney's fees.[4] The manufacturer has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.[5]

[2] The DHSMV has held in an administrative decision that 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. *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). In this holding, the DHSMV ruled that a 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. This Final Order was initially appealed but was later voluntarily dismissed. *See also, In re Am. Suzuki Motor Corp*., 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013) (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.).
[3] s. 320.0699(1), F.S.
[4] *See* ss. 320.64, 320.694, and 320.697, F.S.
[5] s. 320.697, F.S.

Effect of the Bill

Prohibitions for Manufacturers

The bill addresses 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 one existing provision and adds one additional provision.

The bill provides that a manufacturer may not refuse to pay a motor vehicle 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 because the dealer whose existing facilities were approved within the last 10 years is deemed to be in full compliance with such program's eligibility requirements during the remainder of the 10-year period following completion of the prior program.

The bill prohibits a manufacturer from implementing performance-measuring criteria that may have a material or adverse effect on a dealer, or that are unfair, unreasonable, arbitrary, or inequitable, or that do not include all relevant and material criteria, data, and facts. Further, the bill provides that:

- If the performance measurement criteria are based, in whole or in part, on a survey, the survey must be based on a statistically significant and valid random sample.
- A dealer may request how the performance measurement criteria were designed, calculated, established, and applied.

The bill reenacts a number of statutes for the purpose of incorporating the changes made by the bill to s. 320.64, F.S.

The bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   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.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   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.

C. FISCAL COMMENTS:

   None.