HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 775	**FINAL HOUSE FLOOR ACTION:**			
SUBJECT/SHORT TITLE	Motor Vehicle Warranty Repairs and Recall Repairs	116	**Y's**	0	**N's**
SPONSOR(S):	Commerce Committee, Careers & Competition Subcommittee, Diaz, M. and others	**GOVERNOR'S ACTION:**		Approved	
COMPANION BILLS:	CS/CS/CS/SB 466				

SUMMARY ANALYSIS

CS/CS/HB 775 passed the House on April 28, 2017, and subsequently passed the Senate on May 5, 2017.

Current law regulates the contractual relationship between motor vehicle manufacturers and motor vehicle dealers and provides for the licensing of manufacturers, factory branches, distributors, or importers. Moreover, remedies are available for dealers where a manufacturer or other licensed entity violates current law regulating these contractual relationships.

The bill prohibits a motor vehicle manufacturer, distributor or importer ("manufacturer"), except as authorized by law, from denying a motor vehicles dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered repairs on a used motor vehicle under specified circumstances.

The bill requires that a manufacturer, which has a franchise agreement with a motor vehicle dealer, compensate the dealer for a used vehicle that:

- Is of the same make and model manufactured, imported, or distributed by the manufacturer;
- Is subject to a recall notice, including a recall notice issued before July 1, 2017;
- Is held in the dealer's inventory at the time of the recall notice, or taken into the dealer's inventory after the recall notice due to a retail consumer trade-in or a lease return in accordance with the lease contract;
- Cannot be repaired due to unavailability of a remedy for the vehicle within 30 days of the recall notice; and
- For which the manufacturer has not issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires that compensation be paid within 30 days of the dealer's application and be the greater of:

- Payment of at least 1.5 percent of the motor vehicle value for each month or portion of a month that the dealer does not receive a remedy for the vehicle, calculated from the 31st day after the recall was issued, the 31st day after the vehicle was acquired by the dealer, or July 1, 2017, whichever is latest; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the manufacturer for the dealer's costs associated with holding the used vehicle.

The bill exempts motorcycle manufacturers from these requirements.

The bill may have an insignificant fiscal impact on state government. The bill does not have a fiscal impact on local governments.

The bill was approved by the Governor on June 23, 2017, ch. 2017-141, L.O.F., and became effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Florida has regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.[1] Initially, consumer protections laws were safeguards designed to protect consumers from abusive practices at the hands of motor vehicle dealers.[2] In 1970, the Legislature passed comprehensive legislation, embodied in chapter 320, F.S.,[3] regulating the contractual relationship between manufacturers and motor vehicle dealers and requiring the licensing of manufacturers.[4]

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer ("manufacturer") must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the "Florida Automobile Dealers Act"[5] (act), primarily regulate the contractual business relationship between dealers and manufacturers, and provide for the licensure of manufacturers, factory branches, distributors, or importers. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for manufacturers who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a manufacturer must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- The damages that can be assessed against a manufacturer who is in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Section 320.64, F.S., currently lists 40 different criteria that may cause the DHSMV to deny, suspend, or revoke the manufacturer's license. A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with any of these provisions by an applicant or manufacturer will or can adversely and pecuniarily affect the dealer, is entitled to pursue an injunction against the manufacturer, treble damages, and attorney's fees.[6] The manufacturer has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.[7]

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 specifically providing otherwise.

---

[1] Ch. 9157, Laws of Fla. (1923); Ch. 20236, Laws of Fla. (1941).
[2] 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, 1064 (2002), http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr (last visited Mar. 23, 2017).
[3] *See* ch. 70-424, L.O.F. (1970)
[4] *See* s. 320.60(11), F.S.
[5] Walter E. Forehand, *supra* note 2 at 1065.
[6] *See* ss. 320.64, 320.694, and 320.697, F.S.
[7] s. 320.697, F.S.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.[8] The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Motor Vehicle Warranties

A motor vehicle warranty is any written warranty, or affirmation of fact or promise issued or made by the motor vehicle manufacturer in connection with the sale of a motor vehicle to a consumer. A warranty relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance.[9]

Chapter 681, F.S., the "Motor Vehicle Warranty Enforcement Act," provides a regulatory framework for consumers and motor vehicle manufacturers when dealing with motor vehicle sales warranties.

Motor Vehicle Warranty Repairs

A manufacturer is required to timely compensate a motor vehicle dealer who performs work to maintain or repair a manufacturer's product under a warranty.[10] For this purpose, "timely" means within 30 days of receipt of the claim, and "compensate" includes payment for all labor (employee time spent for diagnosis and repair) and parts (replacement parts and accessories) included in the work.[11]

Motor Vehicle Recalls

Upon finding that a motor vehicle or its equipment contains a defect related to motor vehicle safety or does not comply with applicable federal motor vehicle safety standards, a manufacturer can decide to issue a recall notice, or may be required to issue a recall notice if ordered by the National Highway Traffic Safety Administration (NHTSA).[12] A manufacturer is required to submit a report to NHTSA not more than five working days after a defect in its vehicle or its equipment is determined to be safety related or noncompliant with motor vehicle safety standards; however, a manufacturer may choose to petition for exemption from recall notification and remedy requirements if the defect or noncompliance is inconsequential to motor vehicle safety.[13] If it is determined the defect or noncompliance does pose a risk to safety, the manufacturer is required to:

- Notify owners, purchasers, and dealers of the vehicle or equipment; and
- Remedy the defect or noncompliance (by repairing or replacing it, offering a refund, or repurchasing the vehicle.)[14]

The recall notice must be issued no later than 60 days from the date the manufacturer filed its report with NHTSA.[15] Recall notifications sent to motor vehicle dealers and distributors must contain a clear statement identifying the notification as being a safety recall notice, and include:

- An identification of the motor vehicles or equipment included in the recall;
- A description of the defect or noncompliance;

[8] *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act 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).
[9] s. 681.102(22), F.S.
[10] s. 320.696(1), F.S.
[11] *Id.*
[12] 49 C.F.R. ss. 577.5 and 577.6
[13] 49 C.F.R. s. 573.6
[14] NHTSA's Safercar.gov website, *Vehicle Recalls: Frequently Asked Questions*, https://vinrcl.safercar.gov/vin/faq.jsp (last visited Mar. 23, 2017).
[15] 49 C.F.R. s. 577.7

- A brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance;
- A complete description on the recall remedy;
- The estimated date on which the remedy will be available; and
- An advisory stating that it is a Federal violation for a dealer to deliver a new motor vehicle or any new or used item of motor vehicle equipment covered by the notification under a sale or lease until the defect or noncompliance is remedied.[16]

A 2015 NHTSA annual report of recalls by year shows a steady increase in the number of recalls issued from 1995 to 2015.[17] In 2015, 973 recalls were issued affecting over 87.5 million vehicles or equipment.[18]

Recalls on New Vehicles

Federal law prohibits the sale of new motor vehicles determined to have a safety defect or noncompliance with motor vehicle safety standards[19], and requires a manufacturer, after selling the motor vehicle or equipment to the dealer and before it is sold by the dealer, to:

- Immediately repurchase the vehicle or equipment from the motor vehicle dealer at the same price paid, plus transportation charges and at least one percent a month of the price paid prorated from the date of notice to the date of repurchase; or
- Immediately give the dealer, at the manufacturer's expense, the part or equipment needed to remedy the defect or noncompliance, plus cost of installation and one percent a month of the price paid prorated from the date of notice to the date the defect or noncompliance is remedied.[20]

Recalls on Used Vehicles

Federal law, generally, does not prohibit the resale of used vehicles subject to a safety recall. However, manufacturers may choose to direct their dealers to stop selling such vehicles. Additionally, such vehicles may be required to be held in the dealer's inventory without an available remedy.

In 2016, Virginia and Maryland passed laws to require manufacturers to compensate their franchise dealers if the dealer is instructed or coerced by the manufacturer not to sell used vehicles within its inventory that have a recall with no remedy available. Specifically, Maryland law requires if a manufacturer issues a stop sale directive to its franchise dealer on a used vehicle held in inventory by that dealer without a remedy for the recall available, the manufacturer must compensate the dealer by:

- Providing payment to the dealer at a rate of at least one percent per month or portion of a month of the value of the vehicle; or
- Compensating the dealer under a national program that is applicable to all dealers holding a franchise from the manufacturer for the dealer's costs associated with the stop sale directive.[21]

Virginia prohibits a manufacturer from coercing or requiring any dealer, whether by agreement program, incentive provision, or for loss of incentive payments or other benefits, to refrain from selling any used motor vehicle subject to a recall, stop sale directive, technical service bulletin[22], or other manufacturer notification unless the manufacturer has a remedy available. If no remedy is available, the manufacturer

---

[16] 49 C.F.R. s. 577.13
[17] NHTSA's Safercar.gov website, *2015 Annual Recalls Report*, https://www.safercar.gov/staticfiles/safercar/pdf/2015-annual-recalls-report.pdf (last visited Mar. 23, 2017).
[18] *Id.*
[19] Commonly referred to as "stop sale" notices.
[20] 49 U.S.C. s. 30116
[21] Maryland General Assembly, *House Bill 525 – Enrolled*, (Enacted May 28, 2016), *available at* http://mgaleg.maryland.gov/2016RS/bills/hb/hb0525E.pdf (last visited Mar. 23, 2017).
[22] Technical service bulletins, not to be confused with recalls, are notices issued to dealers from manufacturers for nonsafety-related defects. These bulletins usually include recommended procedures for repairing vehicles if certain issues arise.

must compensate the dealer for any affected used motor vehicle in its inventory that the dealer is instructed not to sell by the manufacturer at least one percent a month or any part of a month of the cost of such used vehicle, including repairs and re-conditioning expenses.[23]

Effect of the Bill

The bill amends s. 320.64, F.S., to prohibit a manufacturer, notwithstanding the terms of any franchise agreement, and except as authorized by law upon detection of fraudulent payments, from denying a dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered warranty or recall repairs on a used motor vehicle due to:

- Discovery of the need for such repairs by the dealer during the course of a separate repair requested by the consumer.
- Notification by the dealer to the consumer of the need for such repairs after issuance of an outstanding recall for a safety-related defect.

The bill creates s. 320.6407, F.S., relating to recall notices under franchise agreements. The bill requires that a manufacturer, which has a franchise agreement with a motor vehicle dealer, compensate the dealer for a used vehicle that:

- Is of the same make and model manufactured, imported, or distributed by the manufacturer;
- Is subject to a recall notice, including a recall notice issued before July 1, 2017;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice due to a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract;
- Cannot be repaired due to unavailability of a remedy for the vehicle within 30 days after issuance of the recall notice; and
- For which the manufacturer has not issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of such written statement is to provide notice to the motor vehicle dealer that the vehicle may be sold or delivered based solely on the specific recall notice and may not address a vehicle condition not covered by the recall notice and is not intended to address any other aspect of the vehicle unrelated to the recall notice.

The bill requires such compensation be paid within 30 days of the dealer's application and to be the greater of:

- Payment of at least 1.5 percent of the motor vehicle value (as determined by the average Black Book value for that vehicle's model year and condition) for each month or portion of a month that the dealer does not receive a remedy for the vehicle, calculated from the 31st day after the recall was issued, the 31st day after the vehicle was acquired by the dealer, or July 1, 2017, whichever is latest; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the manufacturer for the dealer's costs associated with holding the used vehicle.

The bill exempts motorcycle manufacturers, distributors, and importers from the provisions of s. 320.6407, F.S.

The bill reenacts s. 320.6992, F.S., providing that amendments made to 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.

The bill takes effect July 1, 2017.

[23] Virginia Acts of Assembly – 2016 Session, *Chapter 534* (Mar. 29, 2016), available at https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0534+pdf (last visited Mar. 23, 2017).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DHSMV may experience an increase in the number of administrative hearings as a result of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   The fiscal impact to the private sector is indeterminate. To the extent that agreements between dealers and manufacturers change, the parties could be impacted positively or negatively. Dealers with vehicles in their inventory impacted by a recall that cannot be repaired will likely experience a positive fiscal impact.

D. FISCAL COMMENTS:

   None.