

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 Committee on Infrastructure and Security

BILL: SB 1178

INTRODUCER: Senator Gruters

SUBJECT: Franchised Motor Vehicle Dealers

DATE: March 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 1178 addresses issues related to contractual agreements between motor vehicle licensees (manufacturers, distributors, and importers) and motor vehicle dealers.

The bill requires that prior to implementing a sales incentive program or reimbursement program, a licensee must provide in writing to each dealer of the same line-make¹ the dealer's performance requirement, sales goal, or sales objective for the program, which will include a detailed explanation of the methodology, criteria, and calculations used to establish the requirement, sales goal, or sales objective. They will also be required to provide each dealer with the performance requirement, sales goal, or sales objective for the program of all other same line-make dealers within the state.

The bill also requires that any dealer who believes that an assigned performance requirement, sales goal, or sales objective is unfair, unreasonable, arbitrary, inequitable, or not applied uniformly to other same line-make dealers of comparable size in comparable markets, may as an alternative to the administrative hearing procedure, file complaints against licensees in any court of competent jurisdiction to seek injunctive relief. It further provides that in any proceeding the licensee has the burden of proving by a preponderance of the evidence that the criteria for measuring the performance, goal, or objective complies with Florida Statutes.

The bill does not appear to have a significant fiscal impact to state and local government.

The bill takes effect July 1, 2019.

¹ Section 320.60(14), F.S., defines "Line-make vehicles" as motor vehicles offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same. However, motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when they are included in a single franchise agreement and every dealer in this state authorized to sell or lease such vehicles has been offered the right to sell or lease the multiple brand names covered by a single franchise agreement.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.² Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.³ In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,⁴ which regulates, in part, the contractual relationship between manufacturers and dealers,⁵ requires the licensing of manufacturers, and regulates numerous aspects of the contracts between the manufacturers and dealers.

Florida Automobile Dealers Act

A licensee 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”⁶ (act), primarily regulate the contractual business relationship between dealers and licensees, 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 licensees 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 licensee 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 licensee who is in violation of Florida Statutes; and
- The DHSMV’s authority to adopt rules to implement these sections of law.

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.

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.⁷ The DHSMV has indicated that it will apply the *Motorsports* holding to

² Chapter 9157, Laws of Fla. (1923); Chapter 20236, Laws of Fla. (1941).

³ 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. 6, 2019).

⁴ See ch. 70-424, Laws of Fla.

⁵ See s. 320.60(11), F.S.

⁶ Walter E. Forehand, *supra* note 2 at 1065.

⁷ 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

every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Grounds for Denial, Suspension, or Revocation of a License

Section 320.64, F.S., provides that an application for license may be denied, or a license may be revoked or suspended, on various grounds. Denials, suspensions, or revocations of dealer licenses can be based on consumer protection, however, the grounds for acting against licensees arise principally out of their dealings with motor vehicle dealers with whom the licensees have a contractual relationship allowing the dealer to sell and service the licensee's new motor vehicles.⁸

Currently there are 42 different criteria that may cause the DHSMV to deny, suspend, or revoke the licensee's license. The criteria cross many topics, including: contractual obligations; coercion or threats; discontinuation, canceling, nonrenewing, modifying, or replacing franchise agreements; requiring changes to a dealer's sales or service facility; reducing the supply of new vehicles or parts to a dealer ; audits; disclosure of confidential financial information; failure to pay the dealer; and denying a warranty repair claims.

The most recent criteria added to s. 320.64, F.S., prohibits a licensee from establishing, implementing, or enforcing criteria for measuring sales or service performance of franchised dealers which may have a negative material or adverse effect on any dealer; which is unfair, unreasonable, arbitrary, or inequitable; or which does not include all applicable local and regional criteria, data, and facts. A licensee or affiliate thereof that seeks to establish, implement, or enforce against any dealer any performance measurement must promptly describe in writing to the dealer, in detail, how the measurement criteria for the dealer's sales and service performance was designed, calculated, established, and applied.⁹

Procedure for Administrative Hearings and Adjudications

A dealer who is directly and adversely affected by the action or conduct of a licensee 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 the DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with the DHSMV.¹⁰

Hearings are held no sooner than 180 days nor later than 240 days from the date a written objection or notice of protest is filed, unless extended with good cause by the administrative law judge.¹¹

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).

⁸ See s. 320.60(1) (defining "agreement" or "franchise agreement").

⁹ Section 320.64(42), F.S.

¹⁰ Section 320.699(1), F.S.

¹¹ Section 320.699(2), F.S.

Civil Damages

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with any of the provisions of the act by an applicant or licensee will or can adversely and pecuniarily affect the dealer, is entitled to pursue treble damages and attorney's fees in civil court.¹² The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.¹³ In addition, a motor vehicle dealer may make an application to any circuit court of the state for a temporary or permanent injunction, or both, restraining any licensee from violating or continuing to violate any of the provisions of ss. 320.60-320.70, F.S., or from failing or refusing to comply with these statutory requirements.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 320.64, F.S., to require a licensee, before implementing any sales incentive or reimbursement program, to provide in writing to each dealer of the same line-make the dealer's performance requirement, sales goal, or sales objective for the program, which will include a detailed explanation of the methodology, criteria, and calculations used to establish the requirement, sales goal, or sales objective. The licensees will also be required to provide each dealer with the performance requirement, sales goal, or sales objective for the program of all other same line-make dealers within the state, and ensure they are applied uniformly to other same line-make dealers of comparable size in comparable markets.

The bill also provides that any dealer who believes that an assigned performance requirement, sales goal, or sales objective is unfair, unreasonable, arbitrary, inequitable, or not applied uniformly to other same line-make dealers of comparable size in comparable markets, may as an alternative to the administrative hearing procedure under current law¹⁵, file complaints against manufacturers in any court of competent jurisdiction to seek injunctive relief under s. 320.695, F.S. It further provides that in any proceeding asserting that a licensee has violated s. 320.64(42), F.S., the licensee has the burden of proving by a preponderance of the evidence that the criteria for measuring the performance, goal, or objective complies with this provision, notwithstanding the fact that the licensee has not yet implemented the program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² See ss. 320.64, 320.694, and 320.697, F.S.

¹³ Section 320.697, F.S.

¹⁴ Section 320.695, F.S.

¹⁵ Section 320.699, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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.¹⁶

Some state laws regulating contracts between automobile manufacturers and dealers have been found to be unconstitutional while other laws have been upheld as constitutional.¹⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the agreements between dealers and motor vehicle manufacturers, distributors, and importers change due to compliance with statutory changes in SB 1178, 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. Government Sector Impact:

The DHSMV already regulates this industry, so the additional grounds proposed in the bill for regulatory actions may result in no additional state impact. In Fiscal Year 2017-2018 the DHSMV referred a total of 50 cases to the Division of Administrative

¹⁶ *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

¹⁷ 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).

Hearings¹⁸. However, it is possible the DHSMV may experience an increase in the number of administrative hearings due to filed petitions as a result of the bill.

The circuit courts of the state already hear petitions for this industry, so the additional grounds proposed in the bill for civil actions may result in no additional state impact. However, it is possible the circuit courts of the state may experience an increase in the number of petitions for damages and for injunctive and declaratory relief as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.64 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁸ Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, SB 1178 Information, (March 8, 2019).