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 1484
INTRODUCER:	Senator Diaz
SUBJECT:	Motor Vehicle Manufacturers and Dealers
DATE:	February 7, 2020
REVISED:	

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

I. Summary:

SB 1484 addresses a number of issues related to contractual agreements between motor vehicle manufacturers, distributors and importers, and franchised motor vehicle dealers.

The bill creates new legislative findings that provide, among other things, that the current franchise system is necessary to: promote fair and harmonious relations between motor vehicle manufacturers, importers, distributors, and their dealers; protect fair competition; and to protect consumers.

The bill creates a new definition for the term "line-make vehicle" and provides that a line-make model that has been the subject of a franchise agreement with a dealer may not be sold by a manufacturer, importer, or distributor, other than through its franchised dealers and may not be rebadged or marketed as a new line-make unless the manufacturer, importer, or distributor, offers a franchise of that new line-make to every dealer that was franchised to sell that model before rebadging.

Lastly, the bill prohibits manufacturers from competing with franchised dealers in: the sale or service of vehicles; the sale of parts, accessories, or products; collision repair; or any other activity related to the line-make sold by a dealer.

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

The bill has an effective date of July 1, 2020.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.[1] Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.[2] In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,[3] which regulates, in part, the contractual relationship between manufacturers and franchised dealers,[4] requires the licensing of manufacturers, and regulates numerous aspects of the contracts between the manufacturers and dealers.

The current statement of intent in s. 320.605, F.S., states it is the Legislature's intent to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.

Florida Automobile Dealers Act

A licensee is a manufacturer, factory branch, distributor, or importer, and 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" (act), primarily regulate the contractual business relationship between franchised dealers and licensees, and provide for the licensure of manufacturers, factory branches, distributors, or importers.[5] 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 franchised 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.

The act applies 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.[6]

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[1] Chapter 9157, Laws of Fla. (1923); Chapter 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), https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1632&context=lr (last visited February 6, 2020).
[3] *See* ch. 70-424, Laws of Fla.
[4] *See* s. 320.60(11), F.S.
[5] Walter E. Forehand, *supra* FN 2 at 1065.
[6] Section 320.6992, 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.[7] The DHSMV has indicated that it will apply this holding to 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

An application for a manufacturer license may be denied, or a license may be revoked or suspended, on various grounds. Denials, suspensions, or revocations of manufacturer licenses can be based on consumer protection; however, the grounds for acting against licensees arise principally out of their dealings with motor vehicle franchised dealers with whom the licensees have a contractual relationship allowing the dealer to sell and service the licensee's new motor vehicles.[8, 9]

Currently there are 42 different criteria that may cause 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 franchised dealer; audits; disclosure of confidential financial information; failure to pay the dealer; and denying a warranty repair claim.[10]

Specifically, 320.64(23), F.S., provides that a licensee is prohibited from competing (with respect to any activity covered by the franchise agreement) with a franchised motor vehicle dealer of the same line-make located in this state with whom the licensee has entered into a franchise agreement.

"Line-make vehicles" are motor vehicles offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer (such as Ford, General Motors, or Honda). However, motor vehicles sold or leased under multiple brand names or marks must constitute a single line-make when they are included in a single franchise agreement and every motor vehicle dealer in this state authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement.[11]

Procedure for Administrative Hearings and Adjudications

A franchised 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

[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 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] Section 320.64, F.S.
[9] *See* s. 320.60(l) (defining "agreement" or "franchise agreement").
[10] *Supra*, note 8.
[11] Section 320.60(14), F.S.

by either filing a request with DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with DHSMV.[12]

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.[13]

Civil Damages

A motor vehicle franchised 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.[14] The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.[15] In addition, a motor vehicle franchised 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.[16]

III. Effect of Proposed Changes:

The bill creates a new definition for the term "line-make vehicle" which expands the current definition. The new definition includes all models and types of motor vehicles, regardless of the kind of engine, power plant, or drive train they have; their design; or their intended use or classification, which are offered for retail sale, lease, license, subscription, or any other method of distribution under a common name, trademark, service mark, or brand name of the manufacturer. Additionally, the bill prohibits a line-make model or type that has been the subject of a franchise with a motor vehicle dealer in this state from being sold or otherwise distributed or marketed in any way by an applicant or licensee other than through its franchised motor vehicle dealer, and, thereafter, may not be rebadged or otherwise marketed as a new line-make unless the manufacturer, importer, or distributor of such new line-make offers a franchise of that new line-make to every motor vehicle dealer that was franchised to sell that model or type before rebadging.

The bill replaces the Legislative intent with the more expansive Legislative findings below:

> The Legislature finds and declares that the distribution, marketing, sale, leasing, rental, or otherwise providing title, use, or possession to consumers and other entities of motor vehicles, replacement parts, accessories, and the servicing and repair thereof in this state vitally affects the general economy of the state and the public safety and welfare of its residents. The Legislature further finds that the motor vehicle franchise system in this state operates within a defined and highly regulated statutory scheme; assures consumers of a well-organized distribution system that supports the availability of new motor vehicles; provides tens of

[12] Section 320.699(1), F.S.
[13] Section 320.699(2), F.S.
[14] *See* ss. 320.64, 320.694, and 320.697, F.S.
[15] Section 320.697, F.S.
[16] Section 320.695, F.S.

> thousands of jobs for the residents of this state; provides a network of quality warranty, repair, and recall facilities; and provides a cost-effective method for the state to police the system through licensing and regulation of the interactions between private sector franchisors and franchisees, and that such regulation is necessary to promote fair and harmonious relations between motor vehicle manufacturers, importers, distributors, and their dealers; to protect fair competition; to protect consumers; and to provide minorities with opportunities for participation as motor vehicle dealers.

The bill amends s. 320.64(23), F.S., to prohibit the licensee from competing (or announcing its intention to compete) with one of its franchised dealers in the sale or service of vehicles; in the sale of replacement parts, accessories, or after-market products; in collision repair; or in any other motor vehicle dealer activity related to the line-make for which the motor vehicle dealer has a franchise agreement with the licensee.

The term "sale" includes the sale, leasing, rental, licensing, subscription, or any other transfer to a retail consumer, a wholesaler, or a broker of title, possession, or use of a motor vehicle, replacement parts, or accessories that are in the franchise agreement made with the motor vehicle dealer.

The bill will make it unlawful for manufacturers to sell parts to a retail consumer, a wholesaler, or a broker of title. Additionally, the language appears to prohibit manufacturers from the operation of vehicle subscription programs (subscription services allow consumers to pay a monthly subscription fee to have access to several vehicle models, which they can change at their convenience, and the fee also covers the cost of insurance, maintenance and roadside assistance).[17]

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[17] Kyle Hyatt, *Roadshow's guide to car subscription services, an alternative to buying or leasing* (December 27, 2019), cnet.com, available at https://www.cnet.com/roadshow/news/2020-new-car-subscription-service-guide-buying-leasing-audi-genesis-porsche-volvo/ (last visited February 7, 2020).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Federal Contracts Clause[18] provides that no state shall pass any law impairing the obligation of contracts. 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.[19]

Some state laws regulating contracts between automobile manufacturers and franchised dealers have been found to be unconstitutional while other laws have been upheld as constitutional.[20]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is unclear whether the bill's provisions will be construed to modify or render unenforceable any existing contract or contract rights. To the extent the agreements between franchised dealers and motor vehicle manufacturers, distributors, and importers change due to compliance with statutory changes in the bill, the parties may be positively or negatively impacted.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

[18] U.S. Const. art I § 10.
[19] *Vesta Fire Ins. Corp. v. State of Fla.,* 141 F.3d 1427, 1433 (11th Cir. 1998).
[20] *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).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.60, 320.605, and 320.64.

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.