

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 Judiciary

BILL: CS/SB 1484

INTRODUCER: Infrastructure and Security Committee and Senator Diaz

SUBJECT: Motor Vehicle Manufacturers and Dealers

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1484 addresses a number of issues related to contractual agreements between motor vehicle manufacturers (or distributors or importers) and franchised motor vehicle dealers.

Current law prohibits a manufacturer, importer, or distributor of a given brand of vehicle from competing with its dealers of that brand *in any activity covered in their franchise agreement*. The bill also prohibits manufacturers from competing with their dealers but by listing the particular activities at which they may not compete, such as the sale and service of motor vehicles.

The bill also expressly prohibits a manufacturer that has sold a brand of vehicle through a franchised dealer from selling that brand of vehicle in any other way, regardless of whether the manufacturer “rebadges” the vehicle. However, the manufacturer may sell a rebadged vehicle in some other way if it first offers the existing dealer the opportunity.

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.

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

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 3 at 1065.

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

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

⁶ Section 320.6992, F.S.

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(1) (defining "agreement" or "franchise agreement").

¹⁰ *Supra*, note 9.

¹¹ Section 320.60(14), F.S.

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 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 addresses a number of issues related to contractual agreements between motor vehicle manufacturers (or distributors or importers) and franchised motor vehicle dealers.

Current law prohibits a manufacturer, importer, or distributor of a given brand of vehicle from competing with its dealers of that brand *in any activity covered in their franchise agreement*. The bill also prohibits manufacturers from competing with their dealers, but by listing the particular activities at which they may not compete, such as the sale and service of motor vehicles. The bill specifies that "sale" includes rental, subscription,¹⁷ or lease of a vehicle.

The bill also expressly prohibits a manufacturer that has sold a brand of vehicle through a franchised dealer from selling that brand of vehicle in any other way, regardless of whether the manufacturer "rebadges" the vehicle. However, the manufacturer may sell a rebadged vehicle in some other way if it first offers the existing dealer the opportunity.

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.

¹⁷ 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. See 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 14, 2020).

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 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 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.

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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill appears to apply only prospectively.¹⁸ Accordingly, it would apply only to contracts entered into after the bill's effective date.¹⁹ Thus, the bill does not appear to impair existing contracts in violation of the contracts clauses of the Florida Constitution or the United States Constitution.²⁰

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may give motor vehicle dealers more opportunities to sell rebranded motor vehicles and parts and services. Conversely, the bill may limit the ability of manufacturers to sell motor vehicles and parts and services through new methods.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

¹⁸ See, e.g., *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So. 2d 557, 559 (“Florida legislation is presumed to operate prospectively unless there exists a showing on the face of the law that retroactive application is intended.”); *Young v. Altenhaus*, 472 So. 2d 1152, 1153 (Fla. 1985) (stating that “in the absence of an explicit legislative expression to the contrary, a substantive law is to be construed as having prospective effect only.”); *Fla. Ins. Guar. Ass’n., Inc. v. Devon Neighborhood Ass’n., Inc.* 67 So. 3d 187, 196 (Fla. 2011) (stating that the inclusion of effective date generally rebuts intent for retroactive application of law).

¹⁹ See, e.g., *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So. 2d 557, 559 (stating that a law affecting contracts which applies prospectively does not apply to contracts entered before the law’s effective date); *State Farm Mut. Auto. Ins. Co. v. Hassen*, 650 So. 2d 128, 134 (Fla. 2d DCA 1995) (inferring that prospective application of a law affecting contracts means applying it only to contracts arising after the law’s effective date).

²⁰ See FLA. CONST. art. I s. 10; U.S. CONST. art. I s. 10.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Infrastructure and Security on February 10, 2020:

The committee substitute provides that a licensee is prohibited from attempting to compete with a franchised motor vehicle dealer, unless they are temporarily operating a dealership as allowed under current law. Additionally, the amendment provides that nothing prevents a common entity of an applicant or licensee from selling replacement parts, accessories, or after-market products under the common entity's brand name.

- B. **Amendments:**

None.