

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 Commerce and Tourism

BILL: CS/SB 1820

INTRODUCER: Transportation Committee and Senator Leek

SUBJECT: Motor Vehicle Manufacturers and Franchised Motor Vehicle Dealers

DATE: March 28, 2025

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Shutes</u> | <u>Vickers</u> | <u>TR</u> | <u>Fav/CS</u> |
| 2. | <u>McMillan</u> | <u>McKay</u> | <u>CM</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1820 amends provisions of the Florida Motor Vehicle Dealership Act (Act), which governs the licensure of and contractual relationship between motor vehicle dealers, manufacturers, distributors, and importers.

The bill prohibits an applicant or licensee (manufacturer, distributor, importer) or common entity from implementing or enforcing sales or service measuring criteria without first making available and readily accessible a written description to each franchised dealer which states how the performance measurement criteria was designed, calculated, established, and uniformly applied.

The bill prohibits manufacturers, distributors, importers, or a common entity from engaging in any action taken as retaliation against a motor vehicle dealer because the dealer invoked any statutory right created by the motor vehicle franchise law, asserted that the manufacturer, distributor, importer, or a common entity has acted in a manner that violates the motor vehicle franchise law, or participated in an investigation, proceeding, or hearing.

The bill revises provisions relating to the discontinuation, cancellation, nonrenewal, modification or replacement of a motor vehicle franchise agreement to provide that such action is considered unfair under certain conditions.

The bill may have an indeterminate positive fiscal impact on franchised motor vehicle dealers in the state.

The bill takes effect July 1, 2025.

II. Present Situation:

Florida Automobile Dealership Act

The Act,¹ governs the licensure of, and contractual relationship (franchise agreements²) between, motor vehicle manufacturers,³ distributors,⁴ and importers,⁵ and provides substantial protections for motor vehicle dealers.⁶ The Division of Motorist Services within the Department of Highway Safety and Motor Vehicles (DHSMV) administers and enforces the Act, which generally specifies:

- Motor vehicle manufacturers, distributors, and importers must be licensed under the Act to engage in business in Florida and the conditions and situations under which the DHSMV may deny, suspend, or revoke such licenses;
- The requirements for manufacturers, distributors, or importers wishing 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 manufacturers, distributors, or importers 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 such circumstances;

¹ Ch. 70-424, Laws of Fla., codified in ch. 320, F.S.

² “Franchise agreement” means a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make. “Line-make vehicles,” means motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same (such as Ford, General Motors, or Honda). 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 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. *See* ss. 320.60(1), (10), and (14), F.S.

³ Section 320.60(9), F.S. defines a “Motor vehicle manufacturer” to mean any person, whether a resident or non-resident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. This term includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, it distributes its products.

⁴ Section 320.60(9), F.S. defines a “Distributor” to mean a person, resident or nonresident, who, in whole or in part, sells or distributes motor vehicles to motor vehicle dealers or who maintains distributor representatives.

⁵ Section 320.60(7), F.S. defines “Importer” to mean a person who imports vehicles from a foreign country into the United States or into this state for the purpose of sale or lease.

⁶ “Motor vehicle dealer” means any person, firm, company, corporation, or entity who holds a license under s. 32.27, F.S., as a “franchised motor vehicle dealer” and, for commission, money, or other things of value, repairs or services motor vehicles pursuant to a franchise agreement; sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles,; or is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation. Further, any person who repairs or services three or more motor vehicles; buys, sells, or deals in three or more motor vehicles in any 12-month period; or offers or displays for sale three or more motor vehicles is presumed to be a motor vehicle dealer, with exceptions. *See* s. 320.60(13), F.S.

- The damages assessable against a manufacturer, distributor, or importer who violates the Act; and
- The DHSMV's authority to adopt rules to implement these sections of law.⁷

Common Entity

When the Act refers to a "common entity" it is referring to a person or business that is directly or indirectly controlled by, or has more than 30 percent equity interest in, a manufacturer, importer, distributor, or licensee, or an affiliate thereof.⁸

Measuring Sales or Service Performance

The Act prohibits manufacturers, distributors, or importers measuring the sales or service performance of any of their franchised motor vehicle dealers in Florida which have a material or adverse effect on any motor vehicle dealer that are unfair, unreasonable, arbitrary, or inequitable, or do not include all relevant and material local and regional criteria, data, and facts.⁹

Discontinuing, Canceling, Nonrenewing, Modifying, or Replacing Franchise Agreements

The Act authorizes motor vehicle dealers who receive a notice of intent to discontinue, cancel, not renew, modify, or replace a franchise agreement from a manufacturer to, within the 90-day notice period, file a petition or complaint for a determination of whether such action is unfair or prohibited. Such actions are considered unfair if they are not:¹⁰

- Clearly permitted by the franchise agreement;
- Undertaken in good faith;
- Undertaken for good cause;
- Based on a material and substantial breach of the franchise agreement; or
- Applied uniformly.

The Act provides new motor vehicle dealers with at least 180 days to correct an alleged failure before a manufacturer is authorized to send the notice of discontinuation, cancellation, or nonrenewal.¹¹

A modification or replacement is unfair if it is not:¹²

- Clearly permitted by the franchise agreement;
- Undertaken in good faith; or
- Undertaken for good cause.

The manufacturer, distributor, or importer has the burden of proof that such action is fair and not prohibited.¹³

⁷ Section 320.011, F.S. *See also* ss. 320.60-320.70, F.S.

⁸ Section 320.60(2)(a), F.S.

⁹ Section 320.64(42)(a), F.S.

¹⁰ Section 320.641(3), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Complaints and Conduct of Inquiry

The Act requires the DHSMV to conduct an inquiry of a manufacturer relating to any written complaint alleging a violation of any provision of ss. 320.61-320.70, of the Act, made by the following entities:¹⁴

- A motor vehicle dealer with a current franchise agreement with the manufacturer, or
- A motor vehicle dealer association with at least one member with a current franchise agreement issued by the manufacturer.

Motor Vehicle Dealer Association Standing

On May 3, 2022, the First District Court of Appeal affirmed a decision by the DHSMV that the Florida Automobile Dealers Association (FADA) lacked standing to challenge a manufacturer, distributor, or importer based alleged violation of the Act.¹⁵ Specifically, the court held that, even though the FADA's members are motor vehicle dealers, the FADA lacked standing because:

- It is not itself a motor vehicle dealer or other statutorily-authorized person or entity that may bring such a challenge; and
- The FADA was not directly and negatively impacted by the manufacturers, distributors, or importers actions or conduct.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 320.64, F.S., relating to the denial, suspension or revocation of a license issued to a motor vehicle manufacturer, distributor, or importer. Specifically, the bill adds "common entity" to the prohibition of a manufacturer, distributor, or importer from measuring the sales or service performance of their franchised motor vehicle dealers.

The bill prohibits a manufacturer, distributor, importer, or common entity from implementing or enforcing sales or service measuring criteria without first making it available and readily accessible, before implementation and enforcement, a written description to each franchised dealer in Florida which describes how the performance measurement criteria was designed, calculated, established, and uniformly applied.

The bill prohibits manufacturers, distributors, importers, or a common entity from engaging in any action, or implementing any policy, standard, rule, practice, or program, taken as retaliation against a motor vehicle dealer because the dealer invoked any statutory right created by the motor vehicle franchise law, asserted that the applicant, licensee or a common entity has acted in a manner that violates the motor vehicle franchise law, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing that may directly affect the manufacturer, distributor, importer, or common entity.

¹⁴ Section 320.67, F.S.

¹⁵ *Fla. Auto. Dealers Ass'n v. Hyundai Motor Am. Corp.*, 337 So. 3d 893, 894 (Fla. 1st DCA 2022), *reh'g denied* (May 3, 2022).

¹⁶ *Id.*

The bill amends s. 320.641, F.S., relating to the discontinuation, cancellation, or nonrenewal of a motor vehicle franchise agreement to clarify that such action is unfair if it is not based on a material and substantial breach of the franchise agreement by the motor vehicle dealer.

The bill also revises the burden of proof requirement to specify that the manufacturer, distributor, or importer has the burden of proof that the discontinuation, cancellation, nonrenewal, modification, or replacement is fair and not prohibited.

The bill takes effect July 1, 2025.

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:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive fiscal impact on franchised motor vehicle dealers in Florida.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 320.64 and 320.641 of the Florida Statutes.

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 Transportation March 25, 2025:

The committee substitute:

- Removes changes to certain definitions and their applicability.
- Revises the requirements governing when the discontinuation, cancellation, or a nonrenewal of a dealer franchise agreement is considered unfair.
- Restores the provision authorizing a motor vehicle dealer association to initiate a complaint against a manufacturer, distributor, or importer.

- B. **Amendments:**

None.