

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: CS/SB 2682

INTRODUCER: Transportation Committee and Senator Haridopolos

SUBJECT: Motor Vehicle Dealers

DATE: April 19, 2006

REVISED: 4/20/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/3 amendments</u>
3.	<u></u>	<u></u>	<u>JU</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

A manufacturer, distributor, or importer of motor vehicles must have a license in order to conduct business in Florida. Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. A franchised motor vehicle dealer is any person who engages in the business of repairing, servicing, buying, selling, or dealing in motor vehicles pursuant to an agreement between a manufacturer, distributor, or importer, and a franchised motor vehicle dealer.

This committee substitute (CS) provides a franchised motor vehicle dealer that has been licensed continuously for the past 2 years and is in good standing with the Department of Highway Safety and Motor Vehicles (DHSMV) is exempt from the pre-licensing training requirement when seeking a new franchised motor vehicle dealer license.

This CS revises the following provisions pertaining to the contractual relationship between a "licensee" (manufacturers, distributors, or importers) and a franchised motor vehicle dealer:

- Requires a licensee to repurchase certain inventory and business-related equipment from franchised motor vehicle dealers whose franchises have been terminated, and provides for sanctions if these provisions are not followed.

- Specifies new requirements for a licensed manufacturer to open or reopen a dealership without being subject to protest by motor vehicle dealers.
- Limits a licensed manufacturer's ability to prohibit a franchised dealer from selling his or her dealership to a new owner who plans to relocate it, if certain requirements are followed.
- Revises the definition of "demonstrator" vehicle.
- Provides for the measurement of geographic boundaries.

This CS substantially amends sections 320.27, 320.60, 320.64 and 320.642 of the Florida Statutes.

II. Present Situation:

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers and regulates the franchise relationship between franchised dealers and the manufacturers. Section 320.605, F.S., states:

It is the intent of the Legislature to protect the public health, safety, and welfare of 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.

Section 320.27, F.S., defines a "franchised motor vehicle dealer" as "any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1)." Section 320.27(4), F.S., provides the requirements must be met in order for a franchised motor vehicle dealer to receive a license certificate, which must be renewed every 2 years.

Section 320.642, F.S., provides a dealer who seeks to establish another motor vehicle dealership or relocate a dealership to a location within a community where the same line-make vehicle is presently represented must give written notice by certified mail to DHSMV.

Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. The requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers are primarily in ss. 320.60 thru 320.071, F.S. These sections of law specify:

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a vehicle manufacturer's license;
- The process, timing, and notice requirements for licensed manufacturers wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a licensed manufacturer must follow if it wants 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 circumstances under which a licensed manufacturer, distributor, or importer may temporarily operate as a licensed vehicle dealer;
- Amounts of damages and fines that can be assessed against licensed manufacturers in violation of statutes;
- The ability of licensed vehicle dealers to seek administrative hearings; and
- DHSMV's authority to promulgate rules to implement these sections of law.

III. Effect of Proposed Changes:

CS/SB 2682 makes a number of changes to existing statutes regulating automobile franchisees in this state. The general impact of the CS is to raise the level of protection for franchised motor vehicle dealers. A section-by-section analysis is as follows:

Section 1: Amends s. 320.27(4), F.S., to provide a franchised motor vehicle dealer that has been licensed continuously for the past 2 years and is in good standing with DHSMV is exempt from the pre-licensing training requirement when seeking a new franchise motor vehicle dealer license.

Section 2: Amends s. 320.60(3), F.S., to clarify the existing definition of "demonstrator" by specifying new vehicles which have been "driven" by prospective customers qualify as demonstrators.

Section 3: Amends s. 320.64, F.S., to create a new cause for a licensee to have its license denied, suspended, or revoked by DHSMV. A licensee can have its license denied, suspended, or revoked by DHSMV for failing to repurchase, within a specific time frame, certain vehicles and other property from a dealer upon the voluntary or involuntary termination of that dealer's franchise. Specifically, licensed manufacturers would be required to:

- Buy back, at net cost, new vehicles with a mileage of 2,000 miles or less, not counting the mileage placed on the vehicle before it was delivered to the dealer;
- Repay the cost of new, unused, undamaged, and unsold parts and accessories in their original packaging and in unbroken lots, with exceptions for sheet metal;
- Pay fair market value for signs, special tools, and other equipment that meet certain conditions; and
- Pay the costs related to packing, storing, loading and shipping these items eligible for repurchase.

The dealer would have 90 days to return the property to the manufacturer, who would have 60 days upon receipt of the items to pay the dealer. These repurchase provisions do not apply in cases where the dealer's franchise is being terminated as a result of a dealer selling his or her assets or stock.

Section 4: Amends s. 320.642(1), F.S., to remove the requirement that notice must be sent to DHSMV by "certified mail."

In addition, this CS amends s. 320.642(5), F.S., to make it more difficult for a licensee to relocate an existing franchised dealership, and then open a new dealership at the old location

without notice or the opportunity for other dealers to protest. The CS provides the opening or reopening of the same or successor motor vehicle dealer within 12 months will not be considered an additional motor vehicle dealer subject to protest if:

- There is no motor vehicle dealer within 25 miles of the proposed location; or
- The opening or reopening is within 6 miles of the prior location and, if an existing dealer of the same line-make is located within 15 miles of the former location, the proposed location is not closer to an existing dealer of the same line-make within 15 miles of the proposed location.

This CS also specifies if the opening or reopening is not considered an additional motor vehicle dealer, then the manufacturer cannot open a new dealership for 2 years if it is within 4 miles of the old site.

This CS creates s. 320.642(7), F.S., to require all measurements required for the purposes of determining the locations of existing and proposed new dealerships be based on the “geometric centroid.” “Geometric centroid” is a complex mathematical term that basically means the center point of, in this case, the dealership’s property.

This CS creates s. 320.642(8), F.S., to provide that DHSMV is not obligated to determine the accuracy of any distance asserted by any party in a notice submitted to it. Any dispute concerning a distance measurement must be resolved by a hearing conducted in accordance with the Administrative Procedures Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS amends s. 320.642, F.S., by removing a provision requiring licensees to give certain notices to DHSMV by certified mail. The cost of certified mail according to the

USPS is \$2.40 in addition to postage. Therefore, this CS will save licensees that must give notice under s. 360.642(1), F.S., \$2.40 per mailing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

Barcode 160190 by the Commerce and Consumer Services Committee:

This amendment permits a full-time management level employee of the dealer to be certified as completing the required continuing education to satisfy the dealer's continuing education requirement.

Barcode 115410 by the Commerce and Consumer Services Committee:

This amendment replace the term "motor vehicle" with "cars and trucks" to specify that the manufacturer buy-back requirement proposed in the bill – on vehicles with a mileage of 2,000 miles or less- applies only to cars and trucks.

Barcode 715004 by the Commerce and Consumer Services Committee:

This amendment requires licensed manufacturers to buy back, when required by law, at net cost, a motorcycle with a mileage of 100 miles or less, rather than 2,000 miles or less proposed in the bill.

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