

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1525

Motor Vehicle Dealerships

SPONSOR(S): General Government Policy Council, Insurance, Business & Financial Affairs Policy Committee, Lopez-Cantera

TIED BILLS:

IDEN./SIM. BILLS: SB 2630

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	17 Y, 3 N, As CS	Livingston	Cooper
2)	Military & Local Affairs Policy Committee	(ref. removed)		
3)	General Government Policy Council	10 Y, 5 N, As CS	Livingston	Hamby
4)	Finance & Tax Council			
5)				

SUMMARY ANALYSIS

Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

The bill revises criteria for incentives and financial support from a licensee to a dealer for relief relating to expanding or improving the dealer's facilities

A licensee may deny a claim or, as a result of a timely conducted audit, charge a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if a licensee can show that the payment for claims were falsely calculated or the dealer failed to comply with the procedures of the licensee for documenting the payments that are claimed to be due.

The bill specifies that a licensee may not take action against a dealer for a transaction with a customer who subsequently exports the vehicle to a foreign country or who resells the vehicle unless the licensee meets with the dealer and attempts to resolve any disputes

The bill provides guidelines addressing the distribution of the franchise assets under a bankruptcy scenario.

The bill specifies criteria to be met if a licensee refuses to offer a bonus, incentive, or other benefit program to a dealer in this state which is offered to other same line-make dealers. Nonpayment could be withheld by a licensee if the refusal to offer the program in this state is supported by applicable economic or marketing considerations

The bill specifies that a licensee may deny a proposed transfer of a legal, equitable, or beneficial interest in a dealership to a trust or other entity or to a beneficiary unless the controlling person or entity is of good moral character. The bill also specifies that a licensee or the DHSMV may not require the transfer based on the relocation or remodeling of the dealership structure or upon any modification of the existing franchise agreement.

The bill remove reference to various prohibited acts by a licensee to collect costs that have been paid to a dealer but does not change current law which specifies that "a licensee shall not recover or attempt to recover, directly or indirectly, any of its costs for compensating a motor vehicle dealer under this section."

The bill is not anticipated to have a fiscal impact on state or local governments.

The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1525c.GGPC.doc

DATE: 4/14/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor vehicle franchise dealerships - generally

Present situation

Manufacturers, distributors, and importers enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles which they manufacture, distribute, or import. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

Section 320.60(1), F.S., defines "Agreement" or "franchise agreement" to mean 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.

Section 320.60(14), F.S., states that "Line-make vehicles" are those 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.

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 320.61(1) states, in part, "No manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business in this state without a license therefor..."

The requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers by the Department of Highway Safety and Motor Vehicles (DHSMV) are primarily by the in ss. 320.60 -320.071, F.S. These sections of law specify, in part:

- the conditions and situations under which the DHSMV may deny, suspend, or revoke a license;

- the process, timing, and notice requirements for licensees 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 licensee 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;
- amounts of damages that can be assessed against licensee in violation of statutes; and
- DHSMV's authority to adopt rules to implement these sections of law.

Dealer penalty criteria

Present situation

Section 320.64, F.S., outlines 37 specific causes for which the DHSMV may deny, suspend, or revoke a license.

A violation of any of these provisions entitles a dealer to the rights and remedies of ss. 320.695 – 320.697, F.S. These remedies include injunctions against licensees, as well as, treble damages and reasonable attorney's fees to be paid by licensees.

A licensee may periodically audit the transactions of a motor vehicle dealer relating to certain financial operations by the dealer. Audits of warranty payments may only be performed by a licensee during the 1-year period immediately following the date a warranty claim was paid. Audits of incentive payments may only be performed by a licensee during an 18-month period immediately following the date the incentive was paid.

Section 320.64(26), F.S., details the types of actions against a dealer by a licensee if the dealer distributes cars for foreign export. This section provides that in a legal challenge, the licensee must prove that the motor vehicle dealer had "actual knowledge that the customer's intent was to export or resell the motor vehicle." This section also states that if the disputed vehicle is titled in any state of the United States, there is a conclusive presumption that the dealer had no actual knowledge.

Effect of proposed changes

The bill amends s. 320.64, F.S., which specifies actions that may lead the DHSMV to deny, suspend, or revoke the state license of a vehicle manufacturer, distributor, or importer. The bill adds or elaborates upon five situations related to automobile franchise agreements between manufacturers, distributors, and importers and the auto dealers who sell their products. Specifically:

- Subsection (10) is amended to revise criteria for incentives and financial support from a licensee to a dealer for relief relating to expanding or improving the dealer's facilities.
- Subsection (25) is amended to specify after audit time periods have elapsed, warranty, maintenance, or other service-related payments and incentive payments are final. The motor vehicle dealer may not be subject to any financial repercussions. A licensee may deny a claim or, as a result of a timely conducted audit, charge a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if a licensee can show that the payment for claims were falsely calculated or the dealer failed to comply with the procedures of the licensee for documenting the payments that are claimed to be due.
- Subsection (25) is further amended to specify after internal dispute resolution processes have been completed, the licensee must give written notice to the dealer of the final amount of any proposed charge-back. If the dealer disputes the amount, a protest may be filed with the department for a final determination.
- Subsection (26) is amended relating to a dealer transaction with a customer who subsequently exports the vehicle to a foreign country or who resells the vehicle. A licensee may not take

action against a dealer for the transaction unless the licensee meets with the dealer and attempts to resolve any disputes. If a dispute remains, the dealer may file a protest with the DHSMV for final determination that the licensee's proposed action is in compliance with the processes under this subsection.

- Subsection (36) provides guidelines addressing the distribution of the franchise assets under a bankruptcy scenario. Specifically, the subsection provides if the termination of the dealer's franchise is the result of the bankruptcy or reorganization of a licensee, or the termination, of the line-make, in addition to the other required payments to the dealer, the licensee is liable to the motor vehicle dealer for an amount at least equal to the fair market value of the franchise for the line-make or, if the licensee is unable to pay, also must pay to the dealer a sum equal to an amount equal to the fair market value of the franchise. The value must be the greater of the value determined as of the day the licensee announces the action that results in the termination, cancellation, or nonrenewal, or the value determined on the day that is 12 months before that date.
- Subsection (38) is created to specify an additional prohibited act by a licensee. This subsection specifies criteria to be met if a licensee refuses to offer a bonus, incentive, or other benefit program to a dealer in this state which is offered to other same line-make dealers nationally or dealers located in an area of this state. Nonpayment could be withheld by a licensee if the refusal to offer the program in this state is reasonably supported by different economic or marketing considerations that are applicable to the licensee's same line-make dealers in this state.
- Subsection (38) also specifies that a licensee may offer a bonus, rebate, incentive, or other benefit program to its dealers in this state that is calculated or paid on a per vehicle basis and is related to the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility. A dealer who does not meet the eligibility criteria is entitled to receive a percentage of the benefit offered by the licensee for activities supporting the dealership but are not related to facility improvements.

Transfer of an interest in a franchise

Present situation

Sections 320.643 and 320.644, F.S., provide procedures for requesting and objecting to transfers of franchise agreements, transfers of assets, and changes in executive management control. If the licensee objects to the transfer or change, the dealer may file a complaint. At a hearing on the complaint, the licensee is required to prove the transfer or change is to a person who is not of good moral character, does not meet the licensee's financial qualifications (in the case of transfers), or does not have the required business experience. Pending a hearing regarding a proposed transfer of an agreement or assets, or a proposed change in executive management control, the franchise agreement continues in effect in accordance with its terms.

Effect of proposed changes

The bill specifies that a licensee may deny a proposed transfer of a legal, equitable, or beneficial interest in a dealership to a trust or other entity, or to a beneficiary, unless the controlling person or entity is of good moral character. The bill also specifies that a licensee may not require the transfer based on the relocation or remodeling of the dealership structure or upon any modification of the existing franchise agreement.

Warranty Responsibilities

Present situation

Section 320.696, F.S., contains the dealer warranty provisions specifying a formula by which dealers are to be reimbursed for labor and parts used in warranty service. This section was amended by the 2007 Legislature to specify manufacturers had to reimburse dealers for parts used in warranty repairs at the dealers' retail rates, just as labor costs for warranty work were already specified. This section was further amended during the 2008 session to clarify the issue of reimbursement rates for warranty work. Specifically, s. 320.696, F.S., authorizes four options for reimbursement for warranty parts:

- Through an agreement between the manufacturer and dealer or
- If no agreement is reached within 30 days after the dealer has made a claim, then the reimbursement is the greater of:
 - The mean percentage markup from 50 consecutive retail customer repairs within the last three months;
 - The manufacturer's highest suggested retail or list price for the parts; or
 - An amount equal to the price a dealer receives from customers for parts used in non-warranty repair work.

Similarly, compensation for labor in warranty repair work would either be by agreement, or, if no agreement is reached within 30 days, then the greater of the hourly rate charged for retail customer repairs or an amount equal to the dealer's markup over dealer cost for retail customer-paid repairs.

Effect of proposed changes

The bill amends s. 320.696, F.S., to remove reference to various prohibited acts by a licensee to collect costs that have been paid to a dealer. Current provisions of law would apply and specify:

“a licensee shall not recover or attempt to recover, directly or indirectly, any of its costs for compensating a motor vehicle dealer under this section.”

B. SECTION DIRECTORY:

Section 1. Amends s. 320.64, F.S., to provide additional criteria for the denial, suspension, or revocation of a license.

Section 2. Amends s. 320.642, F.S., to expand the criteria for denial by the DHSMV of a request to expand operations by a dealer.

Section 3. Amends s. 320.643, F.S., relating to the denial of a request to transfer interest in a dealership.

Section 4. Amends s. 320.696, F.S., related to reimbursement of warranty work.

Section 5. Provides a severability clause.

Section 6. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See D., below

D. FISCAL COMMENTS:

Indeterminate. To the extent that the bill could require motor vehicle manufacturers to provide additional compensation to motor vehicle dealers for warranty work, there may be an increase in expenditures for manufacturers who currently compensate dealers for warranty labor and parts at levels below market prices. In the same respect, dealers in the state of Florida may see an increase in revenues due to the increase in the level of reimbursement received for warranty work from manufacturers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 19, 2009, the Insurance, Business, and Financial Affairs Committee took up the bill, adopted a strike all amendment, and passed the bill as a CS. The CS differs from the bill as originally filed as follows:

The CS:

- Prevents a licensee from coercing a motor vehicle dealer into involuntarily ordering or accepting motor vehicles, parts, accessories, or other commodities in excess of that number which the dealer considers as reasonably required to adequately represent the licensee's line-make in order to meet current and foreseeable market demand.
- Provides additional criteria for incentives and financial support from a licensee to a dealer for relocation relief.
- Specifies after audit time periods have elapsed, warranty or other service-related payments and incentive payments are final. The motor vehicle dealer may not be subject to an adverse action such as financial charge-backs, reducing vehicle allocations, or threatening franchise termination.

- Provides a licensee may deny a claim or, as a result of a timely conducted audit, charge a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if a licensee can show the payment for claims were falsely calculated or the dealer failed to comply with the procedures of the licensee for documenting the payments claimed to be due.
- Repeals a conclusive presumption in s. 320.64(26), F.S., relating to one of the offenses for which a dealer can be penalized.
- Provides guidelines addressing the distribution of the franchise assets under a bankruptcy scenario.
- Includes criteria when determining whether the existing franchised dealers are providing adequate representation, adequate competition, and convenient customer service, to include anticipated degree of marketing and advertising support.
- Modifies provisions authorizing dealers with standing to protest.
- Increases the radius to at least 10 miles that a proposed location of an addition or relocation of a service-only dealership can be from all existing dealerships and not be subject to protest.
- Prohibits the rejection of proposed transfer of interest in a motor vehicle dealer entity to a trust or other entity, or a beneficiary thereof, which is established for estate-planning purposes, if the controlling person of the trust or entity, or beneficiary, is of good moral character.
- Increases the dealer's arithmetical mean percentage markup over dealer cost estimate to include 75 consecutive retail customer repairs within a three-month period, as it relates to reimbursement of warranty work.
- Deletes one of the options for determining reimbursement for warranty parts and labor.

On April 13, 2009, the General Government Policy Council took up the CS, adopted two amendments, and passed the CS by a unanimous vote as a Council Substitute for the Committee Substitute.

The CS/CS differs from the CS in the following areas:

- provides additional guidelines addressing the distribution of the franchise assets under a bankruptcy scenario;
- specifies criteria to be met if a licensee refuses to offer a bonus, incentive, or other benefit program to a dealer in this state which is offered to other same line-make dealers;
- specifies that a licensee may deny a proposed transfer of a legal, equitable, or beneficial interest in a dealership to a trust or other entity or to a beneficiary unless the controlling person or entity is of good moral character; and
- removes reference to various prohibited acts by a licensee to collect costs that have been paid to a dealer.