

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 Transportation Committee

BILL: CS/SB 2410

INTRODUCER: Transportation Committee and Senator Baker

SUBJECT: Motor Vehicle Dealers

DATE: April 13, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.			CM	
3.			JU	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles that they manufacture, distribute, or import. Existing law provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and regulates numerous aspects of the franchise contracts these businesses enter into to conduct business in the state of Florida.

The Department of Highway Safety and Motor Vehicles (DHSMV) recently held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act (ss. 320.60-320.071, F.S.) do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, DOAH Case No. 09-0935 (Final Order HSMV-09-1765-FOI-DMV, Dec. 9, 2009). The Final Order is on appeal. The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

The CS amends s. 320.61, F.S., to specify the DHSMV shall not renew any license unless the licensee complies with the provisions of s. 320.63, F.S.

The CS amends s. 320.63, F.S., to require a manufacturer, distributor, or importer, which has entered into franchise agreements with motor vehicle dealers in this state, to provide an affidavit to DHSMV, each year upon renewal, stating the provisions of such franchise agreements are consistent with and not prohibited by ss. 320.60-320.70, F.S., and rules adopted thereunder then in effect, and that any provisions in such agreements which are inconsistent with or prohibited by such laws or rules then in effect are void.

This CS substantially amends ss. 320.61 and 320.63 of the Florida Statutes.

II. Present Situation:

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles (or line-make) that they manufacture, distribute, or import. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

Current law 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.¹

A “franchised motor vehicle dealer” is defined 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).”²

Section 320.61(1), F.S., states, in part, “[n]o manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as “licensee”) shall engage in business in this state without a license therefor. . . .”

Section 320.61(2), F.S., allows DHSMV to prescribe an abbreviated renewal license application if a licensee had previously filed an initial application pursuant to s. 320.63, F.S. The renewal application must include any information necessary to bring current the information required in the initial application

Section 320.63, F.S., provides a person desiring to be licensed under ss. 320.60-320.070, F.S., to submit an application to DSHMV along with the following documents, which may be required from time to time, to determine the fitness of the applicant or licensee to engage in the business for which the applicant or licensee desires to be licensed:

¹ Section 320.60(1), F.S.

² Section 320.27(1)(c)1., F.S.

- Information relating to the applicant's or licensee's solvency and financial standing;
- A certified copy of the product warranty in any way connected with the motor vehicle or any component thereof;
- A copy of the written agreement and all supplements thereto, together with a list of the applicant's or licensee's authorized dealers or distributors and their addresses, from each manufacturer, distributor, or importer which utilizes an identical blanket basic agreement for its dealers or distributors in this state, which agreement comprises all or any part of the applicant's or licensee's agreements with motor vehicle dealers in this state.
- An affidavit acknowledging the fact that the terms or provisions of the agreement, or any related document, are not inconsistent with, or contrary to the provisions contained in ss. 320.60-320.70, F.S. The affidavit must include any franchise agreement offered to a motor vehicles dealer in this state and shall provide all terms and conditions in such agreement inconsistent with the laws and rules of this state are of no force and effect.
- A certified copy of all applicable preparation and delivery charge obligations of the dealer;
- An affidavit stating the rates which the applicant or licensee pays or agrees to pay any authorized motor vehicle dealer licensed in this state for the parts and labor advanced or incurred by such authorized motor vehicle dealer for or on account of any delivery and preparation obligations imposed by the applicant or the licensee on its dealers or relating to warranty obligations which the applicant or licensee or its principle is obligated to perform.
- Annual license fee; and
- Any other pertinent matter commensurate with the safeguarding of the public interest which DHSMV, by rule, prescribes.

The requirements regulating the business relationship between franchised motor vehicle dealers and licensees by the DHSMV are primarily in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).³ 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;

³*Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, Walter E. Forehand and John W. Forehand, available online here: <http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf>, No section of the statute provides a short title; however, some courts have referred to the provisions as such. See *Mike Smith Pontiac, GMC, Inc. v. Mercedes-Benz of N. Am., Inc.*, 32 F.3d 528, 529 (11th Cir. 1994). *But see Meteor Motors, Inc. v. Hyundai Motor Am. Corp.*, No. 97-8820-Civ., 1999 WL 1800074, at *2 (S.D. Fla. Mar. 9, 1999) (using the "Florida Motor Vehicle Dealer *Protection Act*") (emphasis added).

- Amounts of damages that can be assessed against a licensee in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

The DHSMV recently held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, DOAH Case No. 09-0935 (Final Order HSMV-09-1765-FOI-DMV, Dec. 9, 2009). In this holding, the DHSMV ruled the 2006 amendment to the Florida Automobile Dealers Act which requires that if a dealer's franchise agreement is terminated the manufacturer must buyback from the dealer its unsold vehicles, parts, signs, special tools, and other items, 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 is on appeal.

The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

III. Effect of Proposed Changes:

The CS amends s. 320.61, F.S., to specify the DHSMV shall not renew any license unless the licensee complies with the provisions of s. 320.63, F.S.

The CS amends s. 320.63, F.S., to require a manufacturer, distributor, or importer which has entered into franchise agreements with motor vehicle dealers in this state to provide an affidavit to DHSMV, each year upon renewal, stating the provisions of such franchise agreements are consistent with and not prohibited by ss. 320.60-320.70, F.S., and rules adopted thereunder then in effect, and that any provisions in such agreements which are inconsistent with or prohibited by such laws or rules then in effect are void.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

To the extent the agreements between dealers and motor vehicle manufacturers, distributors, and importers change due to compliance with existing laws, the parties may be positively or negatively impacted.

C. Government Sector Impact:

The DHSMV already regulates this industry, so the additional grounds proposed in the CS for regulatory actions should result in no additional state impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 on April 13, 2010:**

Deleted the following provisions from the original bill that:

- Redefined the terms “agreement” or “franchise agreement” to include certain ancillary agreements;
- Revised legislative intent to include language intended to reconcile the disparity in economic power which manufacturers have over motor vehicle dealers;
- Required certain payments and payment terms to motor vehicle dealers following an announcement that the motor vehicle dealer’s line-make will be discontinued;
- Prohibited a licensee from directly or indirectly entering into a site control agreement, thereby restricting the motor vehicle dealer from further expansion of their business; and
- Authorized certain dealer associations to seek injunctive and administrative relief regarding conduct by a licensee.

B. Amendments:

None.

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