HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 437 Motor Vehicle Franchise Agreements
SPONSOR(S): Transportation & Highway Safety Subcommittee, Holder
TIED BILLS: **IDEN./SIM. BILLS:** SB 740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	8 Y, 6 N, As CS	Brown	Brown
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Sections 320.60 through 320.70, F.S., provide for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and provide regulations regarding numerous components of the franchise contracts they enter into to do business in the state of Florida.

The bill amends s. 320.6992, F.S., to provide that the application of ss. 320.60-320.70, F.S., "including any amendments to ss. 320.60-320.70, F.S.," apply to all existing or subsequently-established motor vehicle distribution systems in Florida, unless such application would impair valid contractual agreements in violation of the State or Federal Constitution.

CS/HB 437 also provides that ss. 320.60-320.70, F.S., "including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise," shall govern all agreements renewed, amended, or entered into subsequent to October 1, 1988.

The bill amends the definition of line-make to provide circumstances under which motor vehicles sold or leased under multiple brand names or marks may be considered a single line-make.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970.[1] Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles (or line-makes) that they manufacture, distribute, or import. Chapter 320, F.S., provides 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.[2]

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)."[3]

The requirements regulating the business relationship between franchised motor vehicle dealers and licensees by DHSMV are primarily in ss. 320.60-320.70, F.S. These sections specify:

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

Section 320.6992, F.S., provides that ss. 320.60-320.70, F.S., apply:

> …to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. The provisions of this act shall not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed or entered into subsequent to October 1, 1988, shall be governed hereby.

[1] Forehand, Walter E. and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Law Rev. 1057 (2002).
[2] Section 320.60(1), F.S.
[3] Section 320.27(1)(c)1., F.S.

Recent Litigation

Ch. 2006-183, Laws of Florida, amended s. 320.64, F.S., to require that, upon termination of a franchise agreement, a manufacturer must buy back from a dealer its unsold vehicles, parts, signs, special tools, and other items.[4]

A dealer, Motorsports of Delray, LLC, entered into an agreement with Yamaha Motor Corp., USA, in 2004, and the agreement was subsequently terminated in 2008.[5] The parties had a dispute regarding the "buy back" language (described above) that was enacted in Ch. 2006-183, Laws of Florida. In an administrative proceeding in 2009, an administrative law judge of the Division of Administrative Hearings (DOAH) held that legislative changes to ss. 320.60-320.70, F.S., do not apply to a dealer whose franchise agreement with a manufacturer was signed prior to the effective date of the legislation.[6] The DOAH order was adopted as the final order of the Department,[7] and may be considered controlling precedent for future disputes between motor vehicle dealers and licensees.

Definitions

Section 320.60(14), F.S., defines "line-make vehicles" as "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."

Proposed Changes

The bill amends s. 320.6992, F.S., to provide that the application of ss. 320.60-320.70, F.S., "including any amendments to ss. 320.60-320.70, F.S.," apply to all existing or subsequently-established motor vehicle distribution systems in Florida, unless such application would impair valid contractual agreements in violation of the State or Federal Constitution.

CS/HB 437 also amends s. 320.6992, F.S., to provide that ss. 320.60-320.70, F.S., "including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise," shall govern all agreements renewed, amended, or entered into subsequent to October 1, 1988.

CS/HB 437 amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when:

- They are included in single franchise agreement; and
- Every motor vehicle dealer in Florida 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.

The definition provides that such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S., relating to licensee "buy-backs" of dealer equipment upon termination of a franchise contract.

B. SECTION DIRECTORY:

Section 1 Amends s. 320.60(14), F.S., to revise the definition of "line-make," clarifying circumstances under which vehicles sold or leased under multiple brand names or marks constitute a single line make.

Section 2 Amends s. 320.6992, F.S., to revise application of provisions relating to franchise agreements.

[4] S. 3, Ch. 2006-183, Laws of Florida.
[5] *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-002129 (Fla. DOAH 2009).
[6] *Id.*
[7] Final Order No. HSMV-09-1765-FOI-DMV.

Section 3 Provides an effective date of July 1, 2011.

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:

None.

D. FISCAL COMMENTS:

N/A

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[8] "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[9] If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[10] The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;

[8] U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

[9] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979). *See also General Motors Corp. v. Romein,* 503 U.S. 181 (1992).

[10] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County, 412 So. 2d 395* (Fla. 3rd DCA 1982). *See also Exxon Corp. v Eagerton,* 462 U.S. 176 (1983). (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public's health, safety, or welfare. *See Khoury v. Carvel Homes South, Inc*., 403 So. 2d 1043 (Fla. 1st DCA 1981).

- Whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- Whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.[11]

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2011, the Transportation & Highway Safety subcommittee reported the bill favorably with one amendment. The amendment revises the definition of "line-make." This analysis is drawn to the bill as amended.

[11] *Pomponio v. Claridge of Pompano Condominium, Inc.,* 378 So. 2d 774 (Fla. 1979).