

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1916

SPONSOR: Transportation Committee and Senator Latvala

SUBJECT: Motor Vehicle Dealers

DATE: April 6, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This CS implements numerous changes to laws regulating motor vehicle manufacturers, distributors, and importers. The CS provides that when a complaint of unfair cancellation of a dealer agreement is made by a franchise motor vehicle dealer, no replacement application may be granted until all appellate remedies have been exhausted. The CS provides additional reasons which could justify the denial, suspension, or revocation of a manufacturer's license. The CS provides that in an action for discontinuation, cancellation, nonrenewal, or replacement of a franchise agreement, the manufacturer has the burden for proving the action is fair and not prohibited, and establishes standards for determining when an agreement is unfair.

The CS prohibits a manufacturer from exercising a right of first refusal with respect to any proposed transfer of ownership of a franchise dealership. The CS clarifies a motor vehicle manufacturer, importer, or distributor may not have any interest in a dealership except under specified conditions, and provides a manufacturer, importer, or distributor may not be issued a motor vehicle dealer license under s. 320.27, F.S. Finally, the CS authorizes additional parties to seek injunctive relief for violations of any of the statutes governing motor vehicle manufacturers. This CS substantially amends the following sections of the Florida Statutes: 320.61, 320.64, 320.641, 320.643, 320.645, and 320.695.

**II. Present Situation:**

As used in ss. 320.60-320.70, F.S., the term "licensee" refers to a manufacturer, factory branch, distributor, or importer. Currently, no motor vehicle may be sold, leased, or offered for sale or lease in this state unless the manufacturer, importer, or distributor of such motor vehicle, which issues an agreement to a motor vehicle dealer in this state, is licensed under ss. 320.60-320.70, F.S.

Section 320.61, F.S., currently provides that when a complaint of unfair cancellation of a dealer agreement is made by a motor vehicle dealer against a licensee and is in the process of being heard

by DHSMV, no replacement application for such agreement may be granted until a final decision is rendered by the Department of Highway Safety and Motor Vehicles (DHSMV) on the complaint of unfair cancellation.

Section 320.64, F.S., provides a license may be denied, suspended, or revoked within the entire state or at specific locations within the state at which the licensee engages in business, upon proof the licensee has failed to comply with the specified provisions with sufficient frequency so as to establish a pattern of wrongdoing.

Section 320.641, F.S., provides any motor vehicle dealer whose franchise agreement is discontinued, canceled, not renewed, modified, or replaced may, within a 90-day notice period, file a petition or complaint for a determination of whether such action is unfair or prohibited. Agreements and certificates of appointment continue in effect until final determination of the issues raised in the petition or complaint by the motor vehicle dealer.

Section 320.643, F.S., establishes certain provisions governing the transfer, assignment, or sale of franchise agreements.

Section 320.645, F.S., provides restrictions on the ownership of motor vehicle dealerships by licensees. With certain exceptions, no licensee or representative of the licensee may own or operate a motor vehicle dealership in this state for the sale or service of motor vehicles which have been or are offered for sale under a franchise agreement with a motor vehicle dealer in this state.

Section 320.695, F.S., authorizes DHSMV, or any motor vehicle dealer to seek a temporary or permanent injunction, or both, restraining any person from acting as a licensee under the terms of ss. 320.60-320.70, F.S.

### III. Effect of Proposed Changes:

Section 320.61, F.S., is amended to provide that when a complaint of unfair cancellation of a dealer agreement is made by a franchise motor vehicle dealer against a manufacturer, no replacement application for such agreement may be granted until all *appellate* remedies have been exhausted by the manufacturer or dealer.

Section 320.64, F.S., is amended to provide additional reasons which could justify the denial, suspension, or revocation of a manufacturer's license in Florida. These additional reasons include the following:

- Failure to offer to its franchise dealers all models manufactured for that line-make or requiring a dealer to pay an extra charge or renovate the dealer's facilities as a prerequisite to receiving a model or series of vehicles;
- Failure to maintain for 3 years records that fully describe the method of allocation or distribution of motor vehicles and the actual allocation of vehicles to franchise dealers. The licensee would have to make such records available to any franchise dealer who lodges a complaint against the manufacturer in this regard at no charge to the dealer;

- An audit of a franchise motor vehicle dealer for a period in excess of 12 months prior to the date of audit (excludes cases of fraud); and
- Offering any refunds, incentives, or other inducements to any person to purchase new motor vehicles without making the same offer to all franchise dealers of the same line-make.

Section 320.641, F.S., is amended to provide in an action for discontinuation, cancellation, nonrenewal, or replacement of a franchise agreement, the licensee has the burden for proving the action is fair and not prohibited, and such agreement shall remain in force until all appellate remedies have been exhausted. The CS also provides standards for determining when an agreement is unfair.

Section 320.643, F.S., is amended to prohibit a manufacturer from exercising a right of first refusal with respect to any proposed transfer of ownership of a franchise dealership.

Section 320.645, F.S., is amended to prohibit a manufacturer from owning any interest in or control of a franchise motor vehicle dealership except for a temporary period not to exceed 1 year during the transition from one owner to another, or for the exclusive purpose of broadening the diversity of qualified persons who own franchise dealerships who have been historically under represented, or when DHSMV has determined that there is no independent person available in the community to own the dealership. In any case in which a manufacturer temporarily owns a dealership, it must continue to make the dealership available for sale unless it certifies in writing to DHSMV that it is attempting to broaden the diversity of qualified persons who own franchise dealerships who have been historically under represented. The CS exempts any dealership owned, controlled, or operated by a licensee on July 1, 2000.

Section 320.695, F.S., is amended to add associations of motor vehicle dealers or associations of manufacturers as parties who may apply to a circuit court for an injunction on behalf of a franchise motor vehicle dealer or manufacturer against any person acting as a manufacturer in this state who has not been properly licensed or who has violated any of the statutes governing motor vehicle manufacturers in Florida.

**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:**

Motor vehicle manufacturers may incur some additional cost in meeting the requirements associated with the cancellation of a motor vehicle dealer agreement.

This CS provides additional safeguards for Florida motor vehicle dealers against unfair or capricious actions by motor vehicle manufacturers.

**C. Government Sector Impact:**

This CS will have no fiscal impact on DHSMV.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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