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 Commerce Committee

BILL:	SB 2582
INTRODUCER:	Senator Haridopolos
SUBJECT:	Motor Vehicle Dealers
DATE:	March 14, 2008 REVISED: 3/18/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/with 2 amendments**
2.			RI	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☒	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

SB 2582 addresses three situations where actions by automobile manufacturers against their franchised motor vehicle dealers could result in loss or suspension of the license to do business in Florida. These situations involve manufacturers' requirements for dealers to remodel their facilities, reasons for reduced vehicle inventory, and dealers' responsibility for car buyers who export their vehicles overseas.

Additionally, the bill prohibits manufacturers from terminating franchise agreements on the basis of fraud and misrepresentation by dealer employees unless there is clear and convincing evidence that the dealership majority owner, dealer operator, or dealer principal had actual knowledge of the fraudulent acts and did not take action to resolve the problems.

Finally, the bill rewrites the existing dealer warranty provision in law to clarify the formula by which dealers are to be reimbursed for labor and parts used in warranty service.

SB 2582 amends ss. 320.64, 320.6412, and 320.696, Florida Statutes.

II. Present Situation:

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

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (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;
- 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.

For example, each franchised motor vehicle dealer maintains an "open account" with the manufacturer with which it has entered into a franchise agreement. The purpose of the open account is to facilitate billing and accounting between the parties, such as for warranty work on customers' vehicles which, since 2007, typically is reimbursed at retail cost. The account is a running series of debits and credits for purchases, rebates, and reimbursements, between the manufacturer and the dealer.

Section 320.64, F.S., outlines the causes for the DHSMV to deny, suspend, or revoke the license of a licensed manufacturer, importer, or distributor of motor vehicles. There are 37 different causes of action that could lead DHSMV to deny, suspend, or revoke the license.

Section 320.641, F.S., outlines the procedure a motor vehicle manufacturer must follow when discontinuing, canceling, modifying, or replacing franchise agreements. The manufacturer is required to provide written notice to the motor vehicle dealer at least 90 days before the effective date of the action, along with the specific grounds for such action. Any dealer who receives such a notice may file a petition or complaint for a determination of whether the action is unfair or prohibited.

According to s. 320.641(3), F.S., a discontinuation, cancellation, or non-renewal of a franchise agreement is considered unfair if:

- It is not clearly permitted by the franchise agreement;
- It is not undertaken in good faith;
- It is not undertaken for good cause;
- It is based on an alleged breach of the franchise agreement which is not in fact a material or substantial breach; or
- The grounds relied upon for termination, cancellation, or non-renewal have not been applied in a uniform and consistent manner by the licensee.

A modification or replacement of a franchise agreement is considered unfair if:

- It is not clearly permitted by the franchise agreement;
- It is not undertaken in good faith; or
- It is not undertaken for good cause.

The motor vehicle manufacturer has the burden of proof that such action is fair and not prohibited.

III. Effect of Proposed Changes:

Section 1 amends s. 320.64, F.S., which specifies actions that may lead DHSMV to deny, suspend, or revoke the state license of a vehicle manufacturer, distributor, or importer. The section adds or elaborates upon three situations related to automobile franchise agreements between manufacturers, distributors, and importers (or licensees) and the auto dealers who sell their products. Specifically:

- Subsection (10) is amended to prevent a licensee from requiring a dealer to relocate, expand, improve, remodel, renovate, or alter previously approved facilities. Such activities would be allowable if the licensee provides a loan or grant to the dealer as an inducement to remodel or renovate his facilities, as long as the agreement was in writing and was voluntarily entered into by the dealer. This inducement also must be available for all of the licensee's dealers in Florida, and the licensee can not withhold a bonus or other incentive that is available to all its other Florida dealers from one who declines to sign the agreement. Also a licensee cannot selectively offer incentive programs to dealers in Florida, other regions, or other states. Finally, licensees may establish and uniformly apply reasonable standards for a dealer's sales and service facilities that are related to upkeep, repair, and cleanliness.
- Subsection (18) prevents a licensee from reducing or altering allocations or supplies of new vehicles to dealers to achieve a purpose that is prohibited by ss. 320.60-320.70, F.S., which regulate vehicle manufacturers, distributors, and importers. It also defines "unfair" as meaning a licensee's refusal or failure to offer any dealer an equitable supply of new vehicles by model, mix, or colors.
- Subsections (22) and (25) are amended to conform to some of the earlier changes in s. 320.64, F.S.
- Subsection (26) is amended to prohibit a licensee from taking or threatening adverse action, including terminating the franchise agreement, against a dealer who has sold or leased vehicles to persons who later export those vehicles to foreign countries. The exception is if the licensee can prove that the dealer had actual knowledge that the customer was planning to export or resell in the foreign country the vehicle. The amendment replaces current law that creates a rebuttable presumption that the dealer did not know his customer's intent, now placing more of the legal burden on the licensee to prove what the dealer knew.
- Subsection (30) is amended to prohibit retaliatory audits against dealers.

Dealer representatives can cite recent instances when manufacturers made their franchisees make expensive improvements or additions to their sales or service facilities that either weren't needed or were years ahead of schedule. In other cases, the dealer representatives say, a licensee

severely reduced the allocation of new vehicles to, or initiated audits of, dealers who refused to make the improvements.

Section 2 creates s. 320.6412, F.S., to generally prevent licensees from terminating, canceling, discontinuing, or not renewing a franchise agreement with a dealer because of misrepresentation, fraud, or filing false or fraudulent statements or claims. The only exception is when the licensee can prove by "clear and convincing evidence" at a hearing that the dealership's majority owner, dealer-operator, or dealer-principal, had actual knowledge of the fraudulent acts at the time they were being committed against customers or the licensee, and did not take steps within a reasonable amount of time, after being advised they were occurring, to prevent them.

Dealer representatives say they may be unaware of fraudulent acts by their employees because they own several dealerships and are not physically on-site every day, but when they learn of such problems, they try to quickly solve them.

Section 3 substantially rewrites s. 320.696, F.S., related to reimbursement of warranty work. This section was amended by the 2007 Legislature to specify that manufacturers had to reimburse dealers for parts used in warranty repairs at the dealers' retail rates, just as labor costs for warranty work already were. Dealer representatives say some manufacturers were not complying with the 2007 law change, so they were compelled to try again to clarify the issue of reimbursement rates for warranty work.

This section of the bill creates four options for reimbursement for warranty parts:

- Per 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 25 consecutive retail customer repairs within the last 3 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 per 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.

Manufacturers would be prohibited from taking or threatening "adverse action," such as threatening to conduct audits or delaying reimbursements against dealers who are owed warranty reimbursement, pursuant to the amended s. 320.696.[1] Additionally, the new s. 320.696(5), F.S., delineates the legal process by which a dealer can dispute a manufacturer's rejection of a warranty reimbursement claim and seek compensatory damages.

This section of the bill also provides that if a court determines with finality that any provision contained within is void or unenforceable, then the remaining provisions can be used.

[1] See the proposed new subsections (2) and (6) of s. 320.696, F.S.

Section 4 provides that SB 2582's provisions take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To the extent that provisions in this bill are interpreted to abrogate the provisions in current contracts between manufacturers and dealers, it may violate the contract clauses of the U.S. and Florida constitutions. The contract clauses prohibit state government from interfering with private rights and duties under existing contracts. See U.S. Const. Art. I § 10 and Fla. Const. Art. I § 10.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Representatives of Florida auto dealers say that their franchise agreements with vehicle manufacturers, as typically written, do not give the dealers equal bargaining power to negotiate the issues that SB 2582 is intended to address.

A representative of the Alliance of Automobile Manufacturers describes the provisions of SB 2582 as "unprecedented, over-reaching, and extremely costly to auto manufacturers," and that some of the provisions may best be handled by the business relationships between the manufacturers and their franchised dealers.[2]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 408254 by the Commerce Committee on March 18, 2008:
Replaces the word "shall" on page 295 with "may," to reflect the fact that the bill includes options on how to compute manufacturer compensation to motor vehicle dealers for warranty parts and labor.

Barcode 486140 by the Commerce Committee on March 18, 2008:
Replaces January 1, 2008, with January 2, 2008, as the baseline date for computing the minimum labor rate for warranty work. The date was changed because vehicle dealerships seldom are open for business on New Year's Day.

[2] Undated memoranda provided by Wade Hopping, representing the Alliance of Automobile Manufacturers, on file with the Senate Commerce Committee.