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 Regulated Industries Committee

BILL:	CS/SB 2582
INTRODUCER:	Regulated Industries Committee and Senator Haridopolos
SUBJECT:	Motor Vehicle Dealers
DATE:	April 15, 2008 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill 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 provide a formula by which dealers are to be reimbursed for labor and parts used in warranty service.

The bill substantially amends sections 320.64 and 320.696, Florida Statutes. The bill creates section 320.6412, Florida Statutes.

The bill will take effect upon becoming law.

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:

The bill 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 unless the licensee's requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations and the motor vehicle dealer's market for the licensee's motor vehicles. A licensee may provide a commitment to allocate additional vehicles or a loan or grant to the dealer as an inducement to remodel or renovate his facilities, as long as the agreement is in writing and was voluntarily entered into by the dealer. This inducement also must be available on substantially similar terms, for any of the licensee's same line-make dealers in Florida, and the licensee can not withhold a bonus or other incentive that is available to its other same line-make Florida dealers if the licensee offers to enter into an agreement. Also a licensee cannot selectively offer incentive programs to dealers in Florida, other regions, or other states. A licensee may not discriminate against a dealer with respect to a program, bonus, incentive, or other benefit within which the licensee's zone or region in which the State of Florida is included. 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. The bill does not affect any current contracts between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on the effective date of this act.

- 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, charge backs, or reducing vehicle allocations, 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.

The bill 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 "preponderance of the 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 stated that 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.

The bill amends 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 indicated that some manufacturers were not complying with the 2007 law change; they also maintained that the provision clarifies the issue of reimbursement rates for warranty work.

This section of the bill creates 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 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, F.S. The bill delineates the legal process by which a dealer can dispute a manufacturer's rejection of a warranty reimbursement claim and seek compensatory damages.

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

The provisions of the bill will 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.[1]

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 Regulated Industries on April 15, 2008
The committee substitute (CS) amends s. 320.64, F.S., to prevent a licensee from requiring a dealer to relocate, expand, improve, remodel, renovate, or alter previously approved facilities unless the licensee's requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations and the motor vehicle dealer's market for the licensee's motor vehicles. A licensee may not discriminate or discriminate with respect to inducements against a same line-make dealer with respect to a program, bonus, incentive, or other benefit within which the licensee's zone or region in which the State of Florida is included.

The CS modifies 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 "preponderance of the evidence" that the fraud was unknown by the dealer.

The CS amends s. 320.696, F.S., related to reimbursement of warranty work, and increases the dealer's arithmetical mean percentage markup over dealer cost estimate to include 50 consecutive retail customer repairs within a three-month period.

[1] Undated memoranda provided by Wade Hopping, representing the Alliance of Automobile Manufacturers. (On file with the Senate Commerce Committee)

B. Amendments:

None.