

**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.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SB 1048

INTRODUCER: Senator Garcia

SUBJECT: Motor Vehicle Manufacturer Licenses

DATE: March 24, 2015

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Jones   | Eichin         | TR        | <b>Pre-meeting</b> |
| 2. |         |                | ATD       |                    |
| 3. |         |                | RC        |                    |

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**I. Summary:**

SB 1048 addresses numerous issues related to contractual agreements between motor vehicle licensees and motor vehicle dealers. The bill provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer, factory branch, distributor, or importer. It also prohibits manufacturers from taking certain actions against motor vehicle dealers, and requires certain procedures be followed by the manufacturer when dealing with motor vehicle dealers.

The bill allows certain complaints made by the motor vehicle dealers, normally made to the Department of Highway Safety and Motor Vehicles (DHSMV), to be made to any court of competent jurisdiction. Further, the bill creates an alternative civil cause of action procedure for a motor vehicle dealer directly and adversely affected by the action or conduct of the licensee.

**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 motor vehicle dealers to sell particular vehicles that the licensee manufactures, distributes, or imports. Chapter 320, F.S., provides, in part, for the regulation of the relationship between motor vehicle manufacturers and motor vehicle dealers. Existing law requires the licensing of motor vehicle manufacturers, and regulates numerous aspects of the contracts between manufacturers and motor vehicle dealers.

A motor vehicle manufacturer, factory branch, distributor, or importer must be licensed under ss. 320.60-320.70, F.S., to engage in business in this state.<sup>1</sup> A person desiring to be licensed under ss. 320.60-320.70, F.S., must submit an application to the DHSMV along with required

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<sup>1</sup> Section 320.61(1), F.S.

documents to determine the fitness of the applicant or licensee to engage in the business for which the applicant or licensee desires to be licensed.<sup>2</sup> The DHSMV may prescribe an abbreviated application for renewal of a license if the licensee has previously filed an initial application, and shall include necessary information to bring current the information required in the initial application.<sup>3</sup>

The requirements regulating the contractual business relationship between a motor vehicle dealer and a manufacturer are primarily found in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).<sup>4</sup> These sections of law specify, in part:

- The conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- The process, timing, and notice requirements for manufacturers 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 manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV's role in these circumstances;
- The amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

In 2009, the DHSMV 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.<sup>5</sup>

Currently, s. 320.64, F.S., provides 38 grounds for the DHSMV's denial, suspension, or revocation of the license of a motor vehicle manufacturer. A violation of any of these provisions entitles a motor vehicle dealer to rights and remedies contained within the Florida Automobile Dealers Act.

### III. Effect of Proposed Changes:

The bill addresses several issues related to the contractual agreements between motor vehicle licensees and motor dealers.

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<sup>2</sup> Section 320.63, F.S.

<sup>3</sup> Section 320.61(2), F.S.

<sup>4</sup>Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), <http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf>.

<sup>5</sup> See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). In this holding, the DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act, 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 was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013) (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.).

**Section 1** of the bill amends s. 320.64, F.S., to modify and add acts an applicant or licensee (further referred to as the licensee) is prohibited from committing, including:

- A licensee may not take adverse action against a motor vehicle dealer because a motor vehicle sold, leased, or delivered to a customer was resold or exported more than 90 days after it was delivered to the customer;
- A motor vehicle dealer's franchise agreement may not be terminated, canceled, discontinued, or nonrenewed by a licensee on the basis of any act related to a customer's exporting or reselling of a motor vehicle, *unless* the licensee proves by clear and convincing evidence before a trier of fact that the majority owner, dealer-principal, or equivalent in the franchise agreement had actual knowledge that the customer intended to export or resell the vehicle;
- A license of a licensee may be denied, suspended, or revoked if:
  - Regarding reimbursement for temporary replacement vehicles loaned, rented, or provided by a motor vehicle dealer to or for its service or repair customers, the licensee has failed to make a payment due to a dealer who substantially complied with the terms of the franchise agreement or other contract with the licensee;
  - The licensee required or coerced, or attempted to require or coerce, a motor vehicle dealer to purchase goods from a vendor selected, identified, or designated by the licensee or one of its parents, subsidiaries, divisions, or affiliates;
  - The licensee failed to provide written notice to a motor vehicle dealer of the dealer's rights regarding the purchase of goods or services from a vendor selected, identified, or designated by a licensee;
  - The licensee failed to provide a written statement, if a licensee claims that a vendor chosen by the dealer cannot supply substantially similar goods or services, stating the identity of the vendor selected, identified, or designated by the licensee, and if the licensee has any equitable or beneficial ownership interest in the selected vendor (including percentage of ownership interest), and any compensation paid to the licensee by the vendor; or
  - The licensee has failed to act in good faith or deal fairly with one of its dealers in performing, complying with, or enforcing an agreement. The bill includes factors to determine such failure.
- A licensee may not require a motor vehicle dealer to participate in, contribute to, affiliate with, or join a dealer advertising or marketing entity; and
- A licensee may not require a dealer to participate in, and may not preclude a portion of its dealers in a designated market area from establishing, a voluntary motor vehicle dealer advertising or marketing entity.

It is also added that:

- A motor vehicle dealer who received approval of its facility from the licensee within ten years prior to an incentive program offered by the licensee premised, wholly or in part, on dealer facility improvements is deemed to be in full compliance with facility-related requirements under the offer for the duration of the ten-year period;
- An audit of service-related payments, and incentive payments can be performed by a licensee only during the six-month period immediately following the date the claim or incentive was paid;
- An "incentive" is defined as including any bonus, incentive, or other monetary or nonmonetary thing of value; and

- A licensee may deny a service-related claim or incentive claim, or subject a motor vehicle dealer to a charge-back *only* for the portion of a claim proven to be false or fraudulent by the licensee;

**Section 2** amends s. 320.641, F.S., to include that any motor vehicle dealer who receives a notice of intent to discontinue, cancel, not renew, modify, or replace may, within the 90-day notice period, file a petition with the DHSMV *or* with a court of competent jurisdiction.

Additionally, two paragraphs are added to s. 320.641(6), F.S., to demonstrate criteria met, to determine if a complainant motor vehicle dealer has substantially prevailed.

**Section 3** amends s. 320.642, F.S., to allow an existing franchised motor vehicle dealer, with standing to protest the proposed addition or relocation of a dealer, to file a protest with the DHSMV *or* in any court of competent jurisdiction.

The DHSMV may not issue a license for the proposed additional or relocated dealer until a final decision *not subject to further appeal* is rendered determining the dealer's license should be granted.

**Section 4** adds that a motor vehicle dealer may file a complaint regarding a proposed franchise sale rejection to a "court of competent jurisdiction," as well as the DHSMV.

**Section 5** creates s. 320.66913, F.S., to create an alternative civil cause of action procedure for a motor vehicle dealer directly and adversely affected by the action or conduct of the licensee.

**Section 6** provides that this act takes 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:

The Federal Contracts Clause provides that no state shall pass any law impairing the obligation of contracts.<sup>6</sup> However, the Contracts Clause prohibition must be weighed against the State's inherent power to safeguard its people's interests. Three factors are

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<sup>6</sup> U.S. CONST. art. I, s. 10.

considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.<sup>7</sup>

Some state laws regulating contracts between automobile manufacturers and dealers have been found to have violated the constitution while other laws have been upheld as constitutional.<sup>8</sup>

## **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 could be positively or negatively impacted. Dealers may experience increased revenue from new limitations and procedures governing the incentives, bonuses, and other benefit programs.

### **C. Government Sector Impact:**

The DHSMV and the courts may experience an increase in the number of administrative hearings as a result of the bill.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 320.64, 320.641, 320.642, and 320.643.

This bill creates section 320.69913 of the Florida Statutes.

<sup>7</sup> *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

<sup>8</sup> See *Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (Upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers.); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV.A. 99 N 1985, 2001 WL 36400171, at \*13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors.).

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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