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REVIEW OF THE AUTOMOBILE MANUFACTURER LICENSING PROGRAM

REPORT ABSTRACT

- Florida regulates more dimensions of the automobile manufacturer-dealer business relationship and does so more stringently than any other state. Industry groups disagree on whether the program is needed and its effects.
- The program has typically upheld manufacturer and dealer proposed business actions.
- Programs like Florida's may reduce competition and increase consumer costs.
- The level of competition among dealers should be determined by the free market rather than by government regulation. However, given the program's history, changing the law to streamline regulation appears the best alternative.

PURPOSE OF REVIEW

The Joint Legislative Auditing Committee requested that our office examine the licensure of automobile manufacturers by the Department of Highway Safety and Motor Vehicles (DHSMV). [1] As requested by the Committee, our review answered these questions:

- What is the program's background?
- What have been the results of program activities?
- How do other states regulate auto manufacturers?
- What are the conclusions of recent professional literature?
- What are the perspectives of industry groups on program issues? and
- What are the advantages and disadvantages of continuing the program in Florida?

QUESTIONS AND ANSWERS

WHAT IS THE PROGRAM'S BACKGROUND?

History

The Automobile Manufacturer Licensing program is designed to provide a "level playing field" between vehicle manufacturers and their franchised dealers. Both manufacturers and dealers make their profits through vehicle sales. However, beginning in the 1920s, dealers raised concerns that manufacturers' control of vehicle supply and distribution gave them an unfair advantage in their business relationships with dealers. For example, manufacturers could establish new dealerships or terminate existing dealerships at will and could prohibit dealers from selling their dealerships without manufacturer permission. Until the late 1930s, no state or federal laws regulated this business

[1] Our review was conducted in accordance with generally accepted government auditing standards and accordingly included appropriate performance auditing and evaluation methods.

relationship. Court decisions found that contested manufacturer actions were permissible within the franchise agreements into which dealers had willingly entered.

In 1941, Florida enacted legislation to regulate the relationship between manufacturers and dealers by requiring annual manufacturer licensure. The 1941 law prohibited actions such as coercing dealers into accepting unwanted vehicles or unfairly canceling franchises. The federal government addressed the franchise relationship in the 1956 Dealer's Day in Court Act by providing a cause of action for dealers when franchise cancellation was not done in good faith. Florida's current program was most recently substantially revised in 1988 and is governed by ss. 320.60 through 320.70, F.S.

Program Requirements

Florida's program has two major components: licensing manufacturers and regulating the dealer-manufacturer business relationship through an administrative protest process.

Licensure. In order to sell or lease new vehicles in Florida, manufacturers and their factory branches, distributors, and importers must be licensed by the Department of Highway Safety and Motor Vehicles (DHSMV). To become licensed, manufacturers must submit information on their financial standing, new vehicle warranties, standard franchise agreements, and authorized dealers and distributors. The initial license fee is $300. To maintain licensure, manufacturers must annually renew their licenses with a $100 fee, update required information, and report on appointment of minority dealers. As of January 1996, 119 manufacturers, distributors, and importers had active licenses.

Regulatory Processes. The program regulates four primary aspects of the dealer-manufacturer business relationship:

- Addition of new dealerships and relocation of existing dealerships. A manufacturer seeking to open a new dealership or relocate an existing one must notify DHSMV. The Department publishes notice of the proposed action in the Florida Administrative Weekly and notifies existing dealers in the area of the proposed dealership. These dealers may file an administrative protest with DHSMV within 30 days of the notice if they believe that their business will be adversely affected by competition with the new dealership. During an administrative hearing conducted by the Division of Administrative Hearings, statutory criteria established in s. 320.642, F.S., are considered. They include the proposed dealership's impact on consumers, the public interest, existing dealers, and the manufacturer. DHSMV either approves or denies the dealership application. Denied applications may not be refiled for a 12-month period.
- Dealership cancellation. A manufacturer seeking to cancel an existing dealership agreement must give a 90-day written notice to DHSMV and the affected dealer. During this time, the dealer may file a protest with DHSMV for a determination of the action's fairness in an administrative hearing. Criteria for this decision are established in s. 320.641, F.S., and are generally based on a determination of whether a breach of franchise agreement has occurred. A manufacturer may not proceed with cancellation or appoint a replacement dealer until DHSMV reaches its decision.
- Dealership sales. A dealer wishing to sell a franchise must notify the manufacturer in writing with the proposed buyer's name, address, financial qualifications, and past five years business experience. The manufacturer must approve or disapprove the sale within 60 days. A manufacturer seeking to disapprove the sale must file an administrative complaint with DHSMV for an administrative determination. As provided in s. 320.643, F.S., the sale is to be approved unless the manufacturer can demonstrate that the proposed owner is not of good moral character, has inadequate business

management experience, or has not agreed to comply with the franchise agreement. A protested sale may not proceed unless it is approved by final order.

- Executive management change. A dealer wishing to change the executive management control of its dealership must notify the manufacturer in writing. The dealer must provide the name, address, and the proposed new management team's business experience. A manufacturer seeking to reject this change must file an administrative complaint with DHSMV within 60 days. [2] As provided by s. 320.644, F.S., the manufacturer must demonstrate that the proposed executive managers are not of good moral character or have inadequate business experience.

During fiscal year 1994-95, a total of 26 administrative complaints and protests were filed with DHSMV.

Program Sanctions

Administrative and civil sanctions may be levied against manufacturers for statutory violations. DHSMV may suspend or revoke a manufacturer's license for unfair business practices such as coercing dealers, modifying franchise agreements to adversely affect dealers, or delaying provision of parts or vehicles to dealers. DHSMV may impose administrative fines of up to $1,000 per violation for failure to furnish adequate and correct licensure information and fines up to $5,000 for violating licensure standards. DHSMV may also deny, suspend, or revoke a manufacturer's license for a pattern of violations. Statutory violations may also be prosecuted as first degree misdemeanors. Additionally, any person who suffers pecuniary loss or other adverse effects because of a manufacturer violation may sue the manufacturer for treble damages (three times the loss), plus costs and reasonable attorney's fees.

DHSMV administrators report that no administrative fines have ever been levied against manufacturers for program violations and no manufacturer licenses have been denied, suspended, or revoked. Additionally, they were unaware of any criminal prosecutions for program violations. We identified one instance (*Mike Smith Pontiac, GMC, Inc. v. Mercedes- Benz of North America, Inc.*, 32 F.3d. 528 (11th Cir. 1994) in which the appellate court upheld an award of treble damages for a manufacturer violation of the statute. The final amount of damages to be paid in this case is undetermined as of February 1996 because the case has been remanded to the trial court for mandatory trebling of the damage award. However, industry representatives indicated that the initial award was $5.3 million, which could lead to a final damage award in excess of $15 million. [3]

Program Resources

DHSMV expended approximately $40,000 to administer the program during fiscal year 1994-95. DHSMV collected approximately $58,000 in licensure fees during the year, generating $18,000 for other Department functions. [4] No data were available on program-related expenses incurred by the Division of Administrative Hearings.

WHAT HAVE BEEN THE RESULTS OF PROGRAM ACTIVITIES?

The Automobile Manufacturer Licensing program regulates certain business actions of manufacturers and dealers and creates an administrative process to adjudicate protests of these actions. Our review of administrative

[2] For all four business actions, the action authorized by final order cannot be taken if the party adversely affected files an appeal and a stay is granted by the appellate court or the Department. The action (such as establishing a new dealership) cannot take place until appeals are exhausted.

[3] Industry representatives indicated that the trial court would determine which elements of the damage award should be trebled and as of what date the damages would be calculated.

[4] Program expenses and revenues include fees from approximately 200 mobile home manufacturers and recreational vehicle manufacturers licensed by the Bureau, in addition to the approximately 120 motor vehicle manufacturers.

protests filed and resolved from 1989 through 1995 found that over two-thirds of the actions about which protests were filed were proposed by manufacturers and one-third were proposed by dealers. The process upheld about two-thirds of all proposed business actions.

Sections 320.641 through 320.644, F.S., provide criteria that must be met for various business actions to be successfully challenged. Dealers may protest planned new dealerships and franchise cancellations, while manufacturers may protest planned franchise sales and changes in executive management. In most cases based on these sections, the burden of proof is placed on manufacturers. Manufacturers must show that they have complied with statutory requirements when establishing new dealerships, and they must show that dealers have not met statutory requirements when challenging dealership franchise sales and management changes. Only in actions opposing franchise cancellations is the dealer responsible for proving that the cancellation is unfair according to statutory criteria.

Results of Administrative Hearings

From 1989 through 1995, 202 administrative protests were filed and resolved through the administrative process. We were able to identify the outcomes of 187 of these. [5] As shown in Exhibit 1, over half of the 187 cases involved proposed new dealerships. The remaining cases were about equally divided between proposed franchise sales and disputes over dealership cancellations. Only a few cases involved proposed changes in dealership executive management.

The administrative hearing process upheld about two-thirds of the business actions proposed by manufacturers and dealers. [6] Manufacturers' proposed actions were upheld in 92 of 137 (67%) of the cases in which dealers protested new dealerships or termination of existing dealerships. Similarly, dealers' proposed actions to sell or change the executive management of their franchises were upheld in 28 of the 50 (56%) cases in which manufacturers contested these actions. We also noted that 400 dealerships were newly licensed from July 1989 through May 1995 while approximately 100 protests were filed in about this time frame, indicating that many dealerships are established, relocated, or sold without protest.

Exhibit 1
Administrative Hearings Upheld
Most Manufacturer and Dealer Proposed Actions
(1989 Through 1995)

Proposed Action	Actions Proposed		Total Cases
	Upheld	Overturned	
By Manufacturer:			
Establishment of New Dealership	70	28	98
Termination of Existing Dealership	22	17	39
Total	92	45	137
By Dealer:			
Sale of Dealership	25	20	45
Change of Dealership Executive Management	3	2	5
Total	28	22	50
Total	**120**	**67**	**187**

Source: Office of Program Policy Analysis and Government Accountability analysis of DHSMV and Division of Administrative Hearings records and information from industry associations.

The program overturned only 67 proposed business actions over a seven-year period. Thus, we concluded that manufacturers and dealers generally are proposing business actions that

[5] We examined protests filed since 1989 because substantial changes in the statutory criteria occurred in 1988. We identified case outcomes from DHSMV records and obtained supplemental information from industry associations when DHSMV records did not specify case outcomes. In 15 cases, we were unable to gather enough information to determine the case outcome.

[6] Case resolutions included hearing officer decisions that upheld or overturned the contested actions as well instances where dealers or manufacturers withdrew their protests. As withdrawn protests had the effect of upholding the proposed action, we classified these cases with that outcome. For example, if a manufacturer protested a dealership sale but subsequently withdrew the protest, the case outcome would be the same as if the dealer's action had been upheld—the sale could proceed.

meet statutory criteria. However, it should be noted that the current statutory requirements may encourage manufacturers and dealers to avoid actions that could be overturned.

HOW DO OTHER STATES REGULATE AUTOMOBILE MANUFACTURERS?

There is substantial variation among the states in how they regulate manufacturer-dealer business relationships. Florida's law is the most extensive in the nation. Florida regulates more dimensions of the business relationship between automobile manufacturers and dealers and does so more stringently than do other states.

To compare Florida's system for regulating automobile manufacturers to the systems used by other states, we reviewed the statutes of all 50 states. Forty-nine states have laws that address some element of the manufacturer-dealer business relationship. Only Alaska appears to have no specific provisions in this area.

We compared five aspects of Florida's statute to statutes of other states:

- Termination and Cancellation of Franchise Agreements. Including Florida, 49 states have provisions on the termination or cancellation of franchise agreements, which generally require that manufacturers establish good cause and good faith for this action. Forty-four other states also require manufacturers to notify dealers prior to canceling a franchise agreement. About half (26) of these also provide a mechanism similar to Florida's by which dealers may petition the state to block a proposed franchise termination or cancellation until the state evaluates the legality of the termination.
- Establishment of New Dealerships. Including Florida, 40 states have provisions on establishing dealerships. However, only 38 of these states require manufacturers to provide notice to existing dealers before establishing a new dealership selling the same line-make in the area. Thirty-five other states also enable existing dealers to file a protest with the state to block new dealerships. These states typically require the decision-making body (state agency or court) to consider factors ranging from investment size and permanency to whether the new dealership would be in the public interest. [7] However, Florida's factors are more extensive than most, and Florida also has the broadest application of "relevant market area," the geographical area around existing dealers for which they have the right to protest an establishment of a new dealer. These provisions maximize dealers' ability to protest new dealerships.
- Changes in Dealership Executive Management Control. Most states do not regulate changes in the executive management of dealerships as Florida does. Twenty states including Florida have statutory provisions in this area, but only 12 require dealers to provide notice to manufacturers before changing the executive management of their franchises. Of these, only Florida and Texas involve government in this process by requiring manufacturers to request an administrative determination by the state of the validity of their rejection of proposed management changes. In other states, the denial of executive management change does not require such state involvement.
- Franchise Sale and Transfer. Like Florida, 31 other states have statutory provisions addressing the sale and transfer of dealer franchises. However, only Texas has provisions similar to Florida's, requiring manufacturers to file a complaint with the state if they wish to reject the proposed new franchise owner. Manufacturers must show in an administrative hearing that they have met statutory criteria to reject the proposed new dealership owner.

[7] We noted that only Florida provides that while the fiscal impact on existing dealers must be considered in adjudicating these cases, the fiscal impact on consumers specifically may not be considered. Other states do not address the issue.

- Availability of Civil Damages. Florida and 17 other states allow any person suffering loss as the result of a manufacturer violation to sue for civil damages. Six states allow civil damages to be trebled. However, only three of these states and Florida explicitly provide in their manufacturer-dealer statutes that any person may sue for treble damages.

We classified the provisions of other states as being either similar to or less regulatory than Florida's (we did not identify any states with more restrictive regulatory provisions). States had regulatory provisions similar to Florida's if they had similar criteria and requirements that manufacturers must meet in order to take various actions. States had provisions that were less regulatory if an element in Florida's program was addressed, but had fewer requirements than Florida's statute (allowing the franchise agreement to govern the business action). Exhibit 2 summarizes this information.

We concluded that most states regulate the manufacturer-dealer relationship less than Florida does. In the effort to establish a "level playing field" between manufacturers and dealers, Florida has created a statutory framework covering many aspects of their business relationship. Florida's program enables dealers to administratively protest several types of manufacturer business actions and almost always requires the manufacturers to prove that these actions are justified according to detailed statutory criteria. Should, in the judgment of the state, manufacturers fail to defend their actions dealers and other interested parties have an avenue to sue for damages greater than that allowed by most states.

WHAT ARE THE CONCLUSIONS OF RECENT PROFESSIONAL LITERATURE?

Automobile manufacturer licensure programs have been studied by several states as well as the federal government. These studies have generally concluded that the programs tend to limit competition and increase consumer prices. However, these studies have been challenged by other published articles that assert that the programs are needed to balance power more fairly and protect dealers against unfair business practices by manufacturers.

Exhibit 2
Most Other States Have Less Regulation Than Florida Does

Florida Provision	States with Similar Provisions	States with Less Regulatory Provisions	States with No Regulatory Provisions
Franchise Termination	26	22	1
New Dealership Establishment In Areas Previously Served	0	39	10
Change in Executive Management Control	1	18	30
Franchise Sale, Transfer, or Assignment	1	30	18
Civil Damages for Any Person Suffering Loss	17	22	10
Treble Damages	6	0	43

Source: Office of Program Policy Analysis and Government Accountability analysis of statutes of the 50 states.

Studies by States

Four states—Hawaii, Florida, Tennessee, and Texas—have conducted reviews of their automobile manufacturer licensure programs. [8] Each study concluded that the programs restrain trade and recommended that they be modified or eliminated. For example, a 1991 Texas study recommended eliminating a statutory provision enabling dealers to protest new dealerships or relocation of existing franchises. The report commented that though this provision is intended to prevent over-saturation of the market place, most new dealership applications were approved by the state. The study concluded that the law's primary effect was to delay new competition and create substantial costs for applicants, protesting dealers, and the state. Similarly, a 1986 performance audit of Florida's program issued by the Office of the Auditor General concluded that the program was unnecessary and recommended that it be repealed.

Academic and Federal Studies

The economic impact of manufacturer licensure programs has been studied by both academic researchers and the federal government. Two academic studies published during the 1980s assessed the impact of relevant market area (RMA) laws restricting the establishment of new dealerships on consumer prices. The studies concluded that such programs tended to limit competition and increase vehicle prices. The most extensive study of the economic effects of regulating manufacturer-dealer business relationships was issued by the Federal Trade Commission (FTC) in 1986. [9] The FTC study focused on the effect of RMA laws and concluded that such laws limited competition and had the effect of increasing average new car prices by 6.14%. It estimated that the nationwide impact of RMA laws was to increase annual consumer costs by about $3.2 billion in 1985 prices. The study noted that RMA laws had the largest impact in growth states such as Florida because the laws tended to restrict the supply of dealers while the demand for vehicles was increasing due to population growth.

The FTC study was rebutted in 1987 by a private firm that evaluated the adequacy of the FTC analysis. [10] The rebuttal study, funded by the National Automobile Dealers Association, asserted that the FTC analysis did not develop an adequate theoretical model and used insufficient methods to determine price effects of RMA laws. The study suggested an alternate methodology to determine RMA impact; but it did not conduct such a study or offer alternative price effect estimations.

Commentary on Florida Program

The most recently published commentaries on the Florida program were three 1988 law review articles that discussed the 1988 revisions to ss. 320.60 through 320.70, F.S. [11] These articles discussed the role of the Florida law in altering the power relationship between manufacturers and dealers, with the authors presenting opposite conclusions. One author suggested that the 1988 revisions consolidated power for dealers to the detriment of consumers. The other authors asserted that the 1988 revisions provided dealers needed protection from manufacturers, balanced economic power more fairly, and clarified sections of the statute. These viewpoints are generally representative of the present

[8] Legislative Auditor of the State of Hawaii, *Sunset Evaluation Report: Motor Vehicle Industry Licensing* (1986); Florida Office of the Auditor General, *Performance Audit of the Motor Vehicle Dealer and Manufacturer, Factory Branch, Distributor, and Importer Licensing Programs Administered by the Department of Highway Safety and Motor Vehicles* (1986); Comptroller of the Treasury, *Tennessee Motor Vehicle Commission* (1986); Texas Sunset Advisory Commission, *Texas Motor Vehicle Commission* (1991).

[9] Rogers, Robert P., *The Effect of State Entry Regulation on Retail Automobile Markets: Bureau of Economics Staff Report to the Federal Trade Commission* (1986). The FTC study was based on the prices for nine Chevrolet body-types in 1978 in 13 states that had RMA laws. It estimates the impact of relevant market area laws for 13 states where the laws had been effective for at least two years as of 1978.

[10] Wharton Econometric Forecasting Associates, Inc., *An Evaluation of the FTC's Analysis of the Effects of RMA Laws on Auto Markets* (1987).

[11] Balzer, Barbara, *The Fragility of Good Ideas: A Case for Abolishing Sunset Review of Florida's Motor Vehicle Manufacturer Licensing Statute*, 16 Fl. St. U. Law Review (Fall 1988); Owen, William, *Another Case for the Removal of Florida's Motor Vehicle Manufacturer-Dealer Franchise Trade Regulation from Periodic Sunset Review—A Comment on Balzer*, 16 Fl. St. U. Law Review (Fall 1988); Haskins, Mary E. and Forehand, Walter E., *New Regulations for Motor Vehicle Manufacturers and New Protections for Their Franchisees*, 16 Fl. St. U. Law Review (Fall 1988).

perspectives of manufacturers and dealers as discussed in Question 5.

WHAT ARE THE PERSPECTIVES OF INDUSTRY GROUPS ON PROGRAM ISSUES?

Our discussions with manufacturer representatives and dealer representatives found little common ground between the two groups regarding their perspectives about the program; their only area of agreement was that the Department of Highway Safety and Motor Vehicles provides good service in licensing and facilitating the administrative process. There were four major areas of disagreement between the two groups.

Need for Program

The groups disagreed on whether the program was needed. Dealer representatives asserted that the program is necessary to protect dealers from abuses that occurred before state and federal regulations were enacted. These persons asserted that before legal controls were created, manufacturers engaged in unfair business practices such as arbitrarily canceling franchises, creating more dealerships than a geographic area could reasonably support, unfairly allocating vehicles to dealerships, and providing preferential treatment to retired company executives when dealers tried to sell franchises. The dealer representatives expressed concern that manufacturers would resume such actions if the program were weakened or abolished.

In contrast, manufacturer representatives said that industry conditions have changed and the program is no longer needed. The representatives conceded that some abuses may have occurred in the past. However, they asserted that changes in the industry have increased manufacturer competition with each other to attract the best dealers and have forced manufacturers to maintain viable dealer networks. Accordingly, manufacturers would not take actions that would hurt dealers because this would harm their own ability to sell products in a highly competitive market.

Effects of Restrictions on New and Relocated Dealerships

The groups also disagreed on the effects of restricting manufacturers' ability to create new dealerships and move existing franchises. Manufacturer representatives argued that the program hurts consumers by interfering with the law of supply and demand. They said that enabling existing dealers to block competition from new or moved franchises creates monopolies and results in higher prices and fewer choices for consumers. Dealers can keep vehicle prices artificially high and provide poorer service when they can prevent competition. The representatives also asserted that creating new dealerships has proven to actually benefit existing dealers because it increases market share for their products. They indicated that opening a new dealership would increase sales and profits for existing same-brand dealers because consumers would see more advertising for the brand's cars and trucks and would be more likely to buy these products. Also, existing dealerships likely improve their operations to meet the new competition. The manufacturer representatives argued that restricting the creation and movement of dealerships causes manufacturers to lose potential sales because they cannot readily respond to market changes such as shifts in population and buying habits. Additionally, manufacturers noted that even when they win cases to establish dealerships, they and prospective dealers must incur legal costs and experience delays during the protest process. [12]

Dealer representatives assert that the program has the opposite effects. They indicated that protecting existing dealerships benefits consumers because excessive competition results in higher vehicle prices. They argued that competition from new dealerships does not increase market share but instead reduces sales

[12] Our analysis of a sample of protests filed during 1989 through 1995 showed that they took an average of about six months to reach final order. However, cases to establish new dealerships often involve multiple protests that must be resolved. Manufacturer representatives also asserted that subsequent court appeals could delay case resolution for up to three and a half years.

and profits. The representatives said that new competition also increases rather than reduces prices because dealers must recover their overhead costs regardless of the number of cars sold; dealers have to raise prices by a greater portion of overhead cost when unit sales are reduced. The representatives asserted that in the absence of the program's restrictions, manufacturers would create more dealerships than an area could support. The dealer representatives indicated that the program's restrictions force manufacturers to perform extensive market analysis and propose only those new dealerships that will be economically viable.

Effects of Restrictions on Dealership Sale and Management Changes

The two groups also disagreed on the effects of limiting manufacturers' ability to block franchise sales and management changes. Manufacturer representatives criticized the program as unreasonably requiring them to engage in litigation to reject an unsuitable dealership buyer or manager. This litigation is expensive and burdens prospective purchasers as well as manufacturers and selling dealers. The representatives also asserted that the law does not provide sufficient grounds for rejecting proposed franchise buyers. Manufacturers are not authorized to reject proposed buyers who have insufficient financial qualifications, and they may reject proposed equity buyers (who purchase a partial ownership share of a franchise) only for lack of moral character. The manufacturer representatives asserted that this limits their ability to reject persons who would not enhance the dealer network or provide good customer service. Finally, the manufacturer representatives asserted that Florida's law, which does not provide the right of first refusal, limits manufacturers' ability to establish minority-owned dealerships. [13] Some states give manufacturers the right to purchase franchises if they meet the dealers' asking price. Manufacturers then sell the franchise to a minority owner who may not have been the first choice of the selling dealer.

Dealer representatives countered that the current statutory restrictions on manufacturers' ability to reject dealership and management changes are appropriate. They asserted that the requirement that manufacturers file an administrative complaint to protest a proposed franchise sale or management change requires manufacturers to quickly and openly state the reason for rejection. The representatives stated that the current statutory grounds for rejecting proposed buyers and managers are sufficient and prevent manufacturers from unfairly rejecting qualified applicants. The dealer representatives objected to the concept of first refusal and expressed concern that this would drive down the value of their dealerships. They said that over time, fewer persons would bid for dealerships if their ownership applications could be summarily rejected by manufacturers.

Effects of Civil Damages Provisions

The two groups also disagreed on the fairness of the law's provisions regarding civil damages. Manufacturer representatives assert that exposure to potential treble damages makes manufacturers less willing to terminate disreputable dealers' franchises or disapprove dealership sales to persons with questionable qualifications. This occurs because manufacturers are considered to have violated statute and are subject to treble damages by any party suffering loss if a hearing officer finds after a protest that the manufacturer did not meet all statutory criteria when terminating a franchise or denying a sale, even if the violation results from a good-faith mistake. The representatives also expressed concern that allowing standing to any financially-injured person to sue for damages, rather than only the franchised dealer involved in the action, causes the manufacturer to accept less than satisfactory buyers to avoid potential liability were the buyer turned down for criteria not specifically addressed in the statute. Appointing

[13] Section 288.703(3), F.S., defines "minority person" as a lawful, permanent resident of Florida who is an African-American, a Hispanic-American, an Asian-American, a Native American, or an American woman.

less qualified dealers ultimately results in poorer customer service. They also noted that because manufacturers are constrained from refusing buyers by the threat of damages, they are unable to use this technique to improve dealer networks and appoint minority dealers.

In contrast, dealer representatives asserted that the treble damage provision is a needed deterrent to manufacturer violations. They indicated that the threat of such damages induces manufacturers to strictly obey the law and treat dealers and proposed buyers fairly. Dealers agree that allowing any injured person standing to sue encourages manufacturers to accept the dealer's proposed buyer, but asserted that this gives dealers more freedom to select a buyer of his or her choosing. Dealers said that without the standing clause allowing any person, such as the proposed buyer, to sue, manufacturers would effectively have the right to refuse any buyer even if they met the manufacturer's standard criteria. This would create a right of first refusal that would devalue dealerships.

Department of Highway Safety and Motor Vehicles' Administration

The only point on which dealers and manufacturers appear to agree is that the Department of Highway Safety and Motor Vehicles provides adequate licensing and administrative process services. Both parties commented that licensing is timely and the DHSMV's management of the administrative hearing process is fair and reasonable.

WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF CONTINUING THE PROGRAM IN FLORIDA?

We identified three policy options that the Legislature may wish to consider regarding the Manufacturer Licensing Program. These options are retaining the current program, eliminating the program, and modifying regulatory requirements to more closely match those used in other states. We believe that the proper level of competition between vehicle dealers should be determined by the free market rather than government regulation. However, given the history of this program, modifying the program to streamline regulation appears the best alternative. The potential advantages and disadvantages of each option are discussed below.

Retain Current Program

Under this option, the Legislature would take no action considering the program and continue it unchanged.

The primary advantage of retaining the program is that it may serve to level the playing field between manufacturers and dealers, which could otherwise be unbalanced in the manufacturer's favor. Although it is questionable whether or to what extent manufacturers would undermine dealer networks because they need viable franchises to sell their products, manufacturers could use their economic power to make business decisions over dealer objections without legal controls. The program also provides a forum for resolving disputes between dealers and manufacturers. Dealer representatives noted that the administrative process allows for negotiated settlements that can benefit dealers, even in cases that are decided in favor of the manufacturer's proposed action. The extensive criteria that must be met for new dealerships to be created may help ensure that these franchises will be financially sound.

However, the program has the disadvantage of limiting competition between dealers. [14] Several studies have concluded that laws such as Florida's that restrict new dealerships tend to increase vehicle prices. In the present deregulatory era, the benefits of government

[14] The dealers' assertion that greater dealer competition increases prices because a greater percentage of overhead costs are assessed to each unit sold is based on questionable economic assumptions that overhead costs cannot be reduced and market share is fixed. A recent recommended final order found that a proposed new dealership should be established, noting that the manufacturer in question could not achieve a reasonably expected market share, compared to the national average, because it did not have an adequate number of competitive franchises. A deficient dealer network is not likely to produce the best prices and customer service.

control of the marketplace are not entirely apparent. Also, the extensive statutory criteria that must be met in the wide range of regulated business actions likely increases litigation and attendant expenses for manufacturers, dealers, and dealer applicants that will be passed on to consumers. Additionally, the program may hinder creation of minority-owned dealerships because manufacturers are not authorized to meet the asking price and buy dealerships in order to appoint minority dealers. [15]

Eliminate the Program

Under this option, the Legislature would rescind ss. 320.60 through 320.70, F.S., to eliminate state regulation of motor vehicle manufacturers.

The advantage of this option is that it would reduce government regulation and could have a long-term effect of reducing the prices consumers pay for motor vehicles in Florida. The disadvantage of this option is that it could have short-term disruptive effects on dealers who could face additional competition. Additionally, eliminating all of the program's regulations could increase the risk that manufacturers would take unfair advantage of dealers in business actions, which could potentially affect consumers. Eliminating the program would place Florida outside the mainstream, as all other states except Alaska currently regulate manufacturers in some manner. This option would likely be vigorously opposed by dealers.

Modify the Program

Under this option, the Legislature would amend statutory requirements to lessen regulation and more closely match the requirements used by other states. Our analysis showed that no other state requires such an extensive burden of proof to justify certain business actions. Florida requires manufacturers to meet 11 requirements to justify new dealerships, and it grants standing to a larger number of dealers to protest and litigate proposed business actions than do other states.

We identified three areas where Florida's program could be revised to better correspond to the regulatory requirements of other states:

- Section 320.642, F.S., could be amended to reduce the number of existing dealers with standing to protest a proposed dealership. This could be done by reducing the size of the relevant market area in which dealers may file protests, and by eliminating the provision that allows existing dealers who make 25% of their sales in a proposed dealership area to file protests. Additionally, the specific criteria that manufacturers must meet in order to gain approval of a new dealership could be reduced to a basic set of criteria common to many states. [16] As no other state has such an extensive RMA provision nor such specific criteria in this area, revising Florida's statute to bring it more in line with the rest of the country seems reasonable.

- Sections 320.643 and 320.644, F.S., could be amended to streamline the process used to resolve disputes regarding dealership sales and executive management changes. Presently, manufacturers must file a complaint within 60 days and begin litigation to preserve the right to reject a buyer, even if the manufacturer plans approval after obtaining additional information. Streamlining could be done by requiring dealers to provide additional information on proposed buyers and managers, providing clearer business- and financially-based criteria for the manufacturer's decision to accept or reject a buyer, and requiring dealers to file a protest if they believe that a manufacturer's action was unreasonable. Such a change could reduce the number of cases filed with DHSMV and would conform Florida law to the statutes of most states.

[15] Manufacturer annual reports on their appointment rate of minority dealers describe cases of minority candidates losing financial backing during the delay entailed in protested appointments.

[16] Such criteria is commonly limited to effect of a new dealership on consumers, the existing dealer, and the manufacturer; current adequacy of customer care; the size and permanency of new and existing dealers' investments, and the effect on competition and the public interest.

- Section 320.697, F.S., could be amended to limit the persons who have standing to sue for treble damages due to pecuniary loss. This section has been interpreted by the courts to mean that prospective franchisees who are rejected by manufacturers as unsuitable buyers have standing to bring suit, and that trebling of damages is mandatory if requested. The history of this law indicates that it was promulgated to counter the unfair business practices of manufacturers with their dealers. Allowing standing to sue to those who are not party to the franchise relationship appears to extend the remedy beyond that business interaction, and most states do not authorize such actions.

Reducing regulation of the manufacturer-dealer relationship may cause temporary disruptions in the industry in Florida, but such changes likely will ultimately benefit consumers.

AGENCY RESPONSE

The Executive Director of the Department of Highway Safety and Motor Vehicles stated that since there were no adverse findings, a written response to our review was not necessary.

This project was conducted in accordance with generally accepted government auditing standards and included appropriate performance auditing and evaluation methods. Copies of this report may be obtained by telephone (904/488-1023), by FAX (904/487-3804), in person (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302).

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