

2020 Regular Session

SENATE BILL NO. 343

BY SENATOR JOHNS

MOTOR VEHICLES. Provides relative to the sale and distribution of marine products.
(8/1/20)

1 AN ACT

2 To amend and reenact R.S. 32:1252(20) and (25), 1270(E) and (F), 1270.1(1)(a)(iv), (b), (c),

3 (d), (g), and (n), (2)(d), and (3)(a), 1270.2(B)(1), 1270.4(A), the introductory

4 paragraph of (B) and (B)(2), (D), and (F), 1270.5(A), (B), (C)(1), the introductory

5 paragraph of (D) and (D)(1), (8), and (9), (E), (G)(8), (H), and (K), 1270.6, and

6 1270.7, relative to marine products; provides relative to the definitions of

7 "Franchise" and "Marine dealer"; provides for use of term "selling agreement" in lieu

8 of the term "franchise" relative to persons who sell and distribute marine products;

9 and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 32:1252(20) and (25), 1270(E) and (F), 1270.1(1)(a)(iv), (b), (c), (d),

12 (g), and (n), (2)(d), and (3)(a), 1270.2(B)(1), 1270.4(A), the introductory paragraph of (B)

13 and (B)(2), (D), and (F), 1270.5(A), (B), (C)(1), the introductory paragraph of (D) and

14 (D)(1), (8), and (9), (E), (G)(8), (H), and (K), 1270.6, and 1270.7 are hereby amended and

15 reenacted to read as follows:

16 §1252. Definitions

17 The following words, terms, and phrases, when used in this Chapter, shall

1 have the meanings respectively ascribed to them in this Section, except where the
2 context clearly indicates a different meaning:

3 * * *

4 (20) "Franchise" means any written contract ~~or selling agreement~~ between a
5 motor vehicle or recreational products dealer, a motor vehicle lessor, or a specialty
6 vehicle dealer and a manufacturer, motor vehicle lessor franchisor, or converter of
7 a new motor vehicle or specialty vehicle or its distributor or factory branch by which
8 the motor vehicle or recreational products dealer, motor vehicle lessor, or specialty
9 vehicle dealer is authorized to engage in the business of selling or leasing the
10 specific makes, models, or classifications of new motor vehicles, recreational
11 products, or specialty vehicles marketed or leased by the manufacturer, motor
12 vehicle lessor franchisor, or converter and designated in the franchise agreement or
13 any addendum thereto. For purposes of this Chapter, any written modification,
14 amendment, or addendum to the original franchise agreement, which changes the
15 rights and obligations of the parties to the original franchise agreement, shall
16 constitute a new franchise agreement, effective as of the date of the modification,
17 amendment, or addendum.

18 * * *

19 (25) "Marine dealer" means any person who holds a bona fide contract or
20 ~~franchise~~ **selling agreement** with a manufacturer or distributor of marine products,
21 except for a person engaged in the business of renting or selling new or used
22 watercraft or boats adapted to be powered only by an occupant's energy, and who
23 holds a license as a recreational products dealer pursuant to the provisions of this
24 Chapter.

25 * * *

26 §1270. Establishment of new marine dealerships or relocations; protests; procedure

27 * * *

28 E. In disputes between the marine dealers and manufacturers and distributors
29 regarding the execution of an agreement that would add a new same-line make

1 marine dealership or would add the same product line regardless of brand name
2 within the area of responsibility of an existing marine dealer, the name brand of the
3 boat determines whether a dealer may enter into a **franchise selling agreement** for
4 a particular boat package or boat package line. The marine motor, marine engine,
5 boat trailer, or any accessory made a part of a boat package shall not be the subject
6 of, or a consideration in, an area of responsibility dispute for violation involving the
7 boat package.

8 F. A manufacturer or distributor of a marine motor or marine engine may, in
9 its discretion, enter into a warranty service agreement with a marine dealer of a boat
10 package that is packaged with its particular brand marine motor or engine without
11 violating the area of responsibility of any other marine dealer that has a **franchise**
12 **selling agreement** of that brand marine motor or engine. However, the warranty
13 service agreement shall not be construed to permit the marine dealer to sell the
14 marine motor or engine separate from the boat package, and the marine dealer shall
15 not hold itself out to be a full-line or loose marine motor or engine dealership.

16 * * *

17 §1270.1. Unauthorized acts; marine products

18 It shall be a violation of this Part:

19 (1) For a manufacturer, a distributor, a wholesaler, distributor branch, or
20 factory branch of marine products or any officer, agent, or other representative
21 thereof:

22 (a) To induce or coerce, or attempt to induce or coerce, any licensee:

23 * * *

24 (iv) To enter into a **franchise selling agreement** with a licensee or during the
25 **franchise selling agreement** term, use any written instrument, agreement, release,
26 assignment, novation, estoppel, or waiver, to attempt to nullify or modify any
27 provision of this Chapter, or to require any controversy between a marine dealer and
28 a manufacturer to be referred to any person or entity other than the commission, or
29 duly constituted courts of this state or the United States, if such referral would be

1 binding upon the dealer. Such instruments are null and void, unless done in
2 connection with a settlement agreement to resolve a matter pending a commission
3 hearing or pending litigation.

4 * * *

5 (b) To refuse to deliver to any licensee having a ~~franchise~~ **selling agreement**
6 or contractual arrangement for the retail sale of marine products sold or distributed
7 by such manufacturer, distributor, wholesaler, distributor branch or factory branch,
8 any marine product, publicly advertised for immediate delivery, within sixty days
9 after such marine dealer's order shall have been received.

10 (c) To threaten to cancel any ~~franchise~~ **selling agreement** existing between
11 such manufacturer, distributor, wholesaler, distributor branch or factory branch and
12 the marine dealer for any reason.

13 (d) To unfairly, without just cause and due regard to the equities of the
14 marine dealer, cancel the ~~franchise~~ **selling agreement** of the licensee. The
15 nonrenewal of a ~~franchise~~ **selling agreement** with a marine dealer or his successor
16 without just provocation or cause, or the refusal to approve a qualified transferee or
17 qualified successor to the dealer-operator as provided for in the selling agreement,
18 shall be deemed a violation of this Subparagraph and shall constitute an unfair
19 cancellation, regardless of the terms or provisions of ~~such franchise~~ **the selling**
20 **agreement**. However, at least ninety days notice shall be given to the dealer of a
21 cancellation or nonrenewal of a ~~franchise~~ **selling agreement** except for a
22 cancellation arising out of fraudulent activity of the dealer principal which results in
23 the conviction of a crime punishable by imprisonment.

24 * * *

25 (g) To unreasonably withhold consent to the sale, transfer, or exchange of the
26 dealership to a qualified transferee capable of being licensed as a marine dealer in
27 this state, provided the transferee meets the criteria generally applied by the
28 manufacturer in approving new marine dealers and agrees to be bound by all the
29 terms and conditions of the standard ~~franchises~~ **selling agreement**.

* * *

(n) To make a change in the area of responsibility described in the ~~franchise~~ **selling agreement** or sales and service agreement of a dealer, without the manufacturer or distributor giving the marine dealer and the commission no less than sixty days prior written notice by certified or registered mail.

(2) For a marine dealer, used marine product dealer, marine product salesman:

* * *

(d) To sell or offer to sell makes, models, or classifications of new marine products for which no ~~franchise~~ **selling agreement** and license to sell is held.

* * *

(3)(a) For any person or other licensee to modify a ~~franchise~~ **selling agreement** during the term of the agreement or upon its renewal if the modification substantially and adversely affects the dealer's rights, obligations, investment, or return on investment without giving a sixty-day written notice of the proposed modification to the licensee and the commission unless the modifications are required by law, court order, or the commission. Within the sixty-day notice period, the licensee may file with the commission a complaint for a determination whether there is good cause for permitting the proposed modification. The party seeking to modify or replace an agreement shall demonstrate by a preponderance of the evidence that there is good cause for the modification or replacement. The commission shall schedule a hearing within sixty days to decide the matter. Multiple complaints pertaining to the same proposed modifications shall be consolidated for hearing. The proposed modification may not take effect pending the determination of the matter.

* * *

§1270.2. Warranty; compensation; audits of marine dealer records

* * *

B.(1) Notwithstanding the terms of any ~~franchise~~ **selling agreement**,

1 warranty and sales, incentive, audits of marine dealer records may be conducted by
2 the manufacturer, distributor, distributor branch, or factory branch. Any audit for
3 warranty parts or service compensation shall be for the twelve-month period
4 immediately following the date of the payment of the claim by the manufacturer or
5 distributor. However, a marine dealer shall not be held liable by virtue of an audit for
6 failure to retain parts for a period in excess of six months. Any audit for sales
7 incentives, service incentives, rebates, or other forms of incentive compensation shall
8 be only for the twelve-month period immediately following the date of the final
9 payment to the marine dealer under a promotion, event, program, or activity. In no
10 event shall the manufacturer, distributor, distributor branch, or factory branch fail to
11 allow the marine dealer to make corrections to the sales data in less than one hundred
12 twenty days from the program period. Additionally, no penalty other than amounts
13 advanced on a marine product reported incorrectly shall be due in connection with
14 the audit. With respect to marine products sold during the time period subject to the
15 audit, but submitted incorrectly to the manufacturer, distributor, or wholesale
16 distributor branch or factory branch, the marine dealer shall be charged back for the
17 amount reported incorrectly and credited with the amount due, if anything, on the
18 actual sale date.

19 * * *

20 §1270.4. Succession; right of first refusal; marine dealers

21 A. The terms of the ~~franchise~~ **selling agreement** notwithstanding, any marine
22 dealer may appoint by will, or other written instrument, a designated successor to
23 succeed in the ownership interest of the marine dealer in the marine dealership upon
24 the death or incapacity of the marine dealer.

25 B. Unless good cause exists for refusal to honor the succession on the part of
26 the manufacturer or distributor, any designated successor of a deceased or
27 incapacitated marine dealer of a marine dealership may succeed to the ownership of
28 the marine dealership under the existing ~~franchise~~ **selling agreement** if:

29 * * *

1 (2) The designated successor agrees to be bound by all the terms and
2 conditions of the franchise **selling agreement**.

3 * * *

4 D. If a manufacturer or distributor believes that good cause exists for refusing
5 to honor the succession of a deceased or incapacitated marine dealer, the
6 manufacturer or distributor may, not more than sixty days following receipt of notice
7 of the designated successor's intent to succeed and receipt of such personal or
8 financial data, serve upon the designated successor notice of its refusal to honor the
9 succession and of its intent to discontinue the existing franchise **selling agreement**
10 with the marine dealer not earlier than six months from the date such notice is
11 served.

12 * * *

13 F. If notice of refusal and discontinuance is not timely served upon the
14 designated successor, the franchise **selling agreement** shall continue in effect subject
15 to termination only as otherwise permitted by this Part.

16 * * *

17 §1270.5. Manufacturer, distributor, or wholesaler repurchase; marine dealer;
18 products

19 A. If any marine dealer enters into a franchise **selling agreement** with a
20 manufacturer, distributor, or wholesaler wherein the marine dealer agrees to maintain
21 an inventory of marine products or repair parts, the manufacturer, distributor, or
22 wholesaler shall not terminate or fail to renew the franchise **selling agreement**
23 unless there is a breach of the franchise **selling agreement** by the marine dealer and
24 until ninety days after notice of the intention to terminate, including the breach of the
25 franchise **selling agreement**, has been sent by certified mail, return receipt
26 requested, or commercial delivery service with verification of receipt, to the marine
27 dealer and the commission and the marine dealer has failed to correct the breach
28 within such period.

29 B. If the franchise **selling agreement** is terminated as a result of any action

1 by the marine dealer and the manufacturer, distributor, or wholesaler has not given
 2 due cause, as provided in this Section, for termination of ~~such franchise~~ **the selling**
 3 **agreement**, the manufacturer, distributor, or wholesaler shall not be required to
 4 repurchase the inventory as provided in this Section; however, if the ~~franchise~~ **selling**
 5 **agreement** is terminated as a result of any action by the marine dealer and the
 6 manufacturer, distributor, or wholesaler has given the marine dealer due cause, as
 7 provided in this Section, to terminate the ~~franchise~~ **selling agreement**, the
 8 manufacturer, distributor, or wholesaler shall be required to repurchase that
 9 inventory previously purchased from them, including any new and unused marine
 10 products of the current and immediate prior model or program year and new and
 11 unused parts inventory as provided in this Section.

12 C.(1) It shall be unlawful for the manufacturer, wholesaler, or distributor,
 13 without due cause and pursuant to its own initiating action, to terminate or fail to
 14 renew a ~~franchise~~ **selling agreement**, unless the manufacturer, wholesaler, or
 15 distributor repurchases the new and unused inventory as provided for in this Section.

16 * * *

17 D. It shall not be unlawful for the marine dealer with due cause and pursuant
 18 to the marine dealer's own initiating action to terminate or fail to renew a ~~franchise~~
 19 **selling agreement** with a manufacturer, wholesaler, or distributor, and the
 20 manufacturer, wholesaler, or distributor shall repurchase inventory as provided
 21 pursuant to this Section. To determine what constitutes due cause for a marine dealer
 22 to terminate or fail to renew a ~~franchise~~ **selling agreement**, the following factors
 23 regarding the manufacturer, wholesaler, distributor or representative of one of the so
 24 named shall include whether the manufacturer, wholesaler, distributor, or
 25 representative of one of the so named:

26 (1) Has made a material misrepresentation in accepting or acting under the
 27 ~~franchise~~ **selling agreement**.

28 * * *

29 (8) Has failed to comply with the terms of the ~~franchise~~ **selling agreement**

1 with the marine dealer.

2 (9) Has materially misrepresented the performance or fitness for sale or use
3 of a product line or products covered by the ~~franchise~~ **selling agreement**.

4 E. If a manufacturer, distributor, or wholesaler does not intend to renew a
5 ~~franchise~~ **selling agreement**, the manufacturer, distributor, or wholesaler shall give
6 the marine dealer and the commission ninety days written notice prior to the
7 effective date by certified mail, return receipt requested, or commercial delivery
8 service with verification of receipt.

9 * * *

10 G. The provisions of this Section shall not require the repurchase from a
11 marine dealer of:

12 * * *

13 (8) Any inventory which was ordered by the marine dealer on or after the
14 date of receipt of the notification of termination of the ~~franchise~~ **selling agreement**.

15 * * *

16 H. Upon termination of the ~~franchise~~ **selling agreement**, the marine dealer
17 shall submit a final inventory of marine products and parts on hand to the
18 manufacturer, distributor, or wholesaler by certified mail, return receipt requested,
19 or commercial delivery service with verification of receipt. If a manufacturer,
20 distributor, or wholesaler fails or refuses to repurchase as required by this Section
21 within thirty days of the receipt of the inventory, without just cause, the
22 manufacturer, distributor, or wholesaler shall be subjected to a penalty of the marine
23 dealer's reasonable attorney fees, court costs, and interest on the inventory value of
24 returnable marine products and parts required to be purchased computed at the rate
25 of one and one-half percent per month from the thirty-first day, as long as such
26 repurchase is not made.

27 * * *

28 K. In the event of the death or incapacity of the marine dealer or the majority
29 owner of a person operating as a marine dealer, the manufacturer, distributor, or

1 wholesaler shall, at the option of the heirs, if the marine dealer died intestate, or the
2 legatees or transferees under the terms of the deceased marine dealer's last will and
3 testament if the marine dealer died testate, repurchase the inventory from the heirs,
4 legatees, or transferees as if the manufacturer, distributor, or wholesaler had
5 terminated the contract, and the inventory repurchase provisions of this Section shall
6 apply. The heirs or legatees shall have until the end of the contract term or one year
7 from the date of the death of the marine dealer or majority owner of a person,
8 whichever comes first, to exercise their option pursuant to this Section. However,
9 nothing in this Section shall require the repurchase of inventory if the heirs, legatees,
10 or transferees and the manufacturer, distributor, or wholesaler enter into a new
11 **franchise selling agreement** to operate the marine dealership.

12 §1270.6. Manufacturer termination of line-make; manufacturer bankruptcy; license

13 Notwithstanding the terms of any **franchise selling agreement** or provision
14 of law, if the termination, cancellation, or nonrenewal of a licensee's selling
15 agreement is the result of the termination, elimination, or cessation of a line-make
16 by the manufacturer, distributor, or factory branch, whether by bankruptcy or
17 otherwise, the license issued by the commission may remain in effect at the
18 discretion of the commission pursuant to its rules.

19 §1270.7. Indemnification of marine dealers

20 Notwithstanding the terms of any **franchise selling** agreement, each
21 manufacturer or converter shall indemnify and hold harmless its **franchised selling**
22 **agreement** marine dealers against any judgment for damages, including but not
23 limited to court costs and reasonable attorney fees of the marine dealer, arising out
24 of complaints, claims, or lawsuits including but not limited to strict liability,
25 negligence, misrepresentation, express or implied warranty, or rescission of sale to
26 the extent that the judgment arises out of alleged defective or negligent manufacture,
27 assembly, or design of marine products, parts, or accessories, or other functions by
28 the manufacturer or converter, which are beyond the control of the marine dealer.

