

Regular Session, 2011

HOUSE BILL NO. 261

BY REPRESENTATIVE CARMODY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MOTOR VEHICLES: Provides relative to the La. Motor Vehicle Commission

1 AN ACT

2 To amend and reenact R.S. 32:1261(6)(a) and 1262(B)(1) and to enact R.S. 32:1262(B)(5)
3 through (7), relative to the sale and distribution of motor vehicles; to provide for
4 certain prohibited acts involving franchise agreements; to provide guidelines for
5 audits of dealer records; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 32:1261(6)(a) and 1262(B)(1) are hereby amended and reenacted and
8 R.S. 32:1262(B)(5) through (7) are enacted to read as follows:

9 §1261. Unauthorized acts

10 It shall be a violation of this Chapter:

11 * * *

12 (6) For any person or other licensee:

13 (a) To modify a franchise during the term of the agreement or upon its
14 renewal if the modification substantially and adversely affects the franchisee's rights,
15 obligations, investment, or return on investment without giving sixty-day written
16 notice of the proposed modification to the licensee and the commission delineating
17 the reasons relied on to justify the proposed modification, unless the ~~modifications~~
18 ~~are~~ modification is required by law, court order, or the commission. Within the
19 sixty-day notice period the licensee may file with the commission a complaint for a
20 determination whether there is good cause for permitting the proposed modification.

1 The party seeking to modify or replace an agreement ~~must~~ shall demonstrate by a
2 preponderance of the evidence that there is good cause for the modification or
3 replacement. The commission shall schedule a hearing within sixty days to decide
4 the matter. Multiple complaints pertaining to the same proposed modifications shall
5 be consolidated for hearing. The proposed modification may not take effect pending
6 the determination of the matter.

7 * * *

8 §1262. Warranty; compensation; audits of dealer records

9 * * *

10 B.(1) Notwithstanding the terms of any franchise agreement, warranty and
11 sales incentive, audits of dealer records may be conducted by the manufacturer,
12 distributor, distributor branch, or factory branch. Any audit for warranty parts or
13 service compensation shall be for the twelve-month period immediately following
14 the date of the payment of the claim by the manufacturer or distributor. However,
15 a dealer shall not be held liable by virtue of an audit for failure to retain parts for a
16 period in excess of six months. Any audit for sales incentives, service incentives,
17 rebates, or other forms of incentive compensation shall only be for the twelve-month
18 period immediately following the date of ~~the close of the promotion, event, program,~~
19 ~~or activity.~~ payment to dealer. In no event shall the manufacturer, distributor,
20 distributor branch, or factory branch fail to allow the dealer to make corrections to
21 the sales data in less than one hundred twenty days from the program period.
22 Additionally, no penalty other than amounts advanced on a vehicle reported
23 incorrectly shall be due in connection with the audit. With respect to vehicles sold
24 during the time period subject to the audit, but submitted incorrectly to the
25 manufacturer, distributor, or wholesale distributor branch or factory branch, the
26 dealer shall be charged back for the amount reported incorrectly and credited with
27 the amount due, if anything, on the actual sale date.

28 * * *

- 1 (5) When a manufacturer or distributor disapproves a claim, a charge-back
 2 may not be applied to a claim related to parts installed on a repaired vehicle, unless
 3 the claim was intentionally false or fraudulent.
- 4 (6) It shall be deemed an unfair act pursuant to this Chapter to audit a dealer
 5 more frequently than once every twelve months.
- 6 (7) No claim may be rejected as late if it has been submitted within ninety
 7 days of the date the repair order was written.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Carmody

HB No. 261

Abstract: Provides relative to the sale and distribution of motor vehicles.

Present law provides for unauthorized acts pursuant to present law regarding the sale and distribution of motor vehicles.

Present law provides that it is an unauthorized act for any person or other licensee to modify a franchise during the term of the agreement or upon its renewal if the modification substantially and adversely affects the franchisee's rights, obligations, investment, or return on investment without giving 60 days written notice of the proposed modification to the licensee and Motor Vehicle Commission. Such notice is not required if the modification is required by law, court order, or the commission.

Proposed law requires that the 60-day written notice to the licensee and commission must delineate the reasons relied on to justify the proposed modification.

Present law provides that warranty and sales incentive audits of dealer records may be conducted by the manufacturer, distributor, distributor branch, or factory branch.

Present law further provides that any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 12-month period immediately following the date of the close of the promotion, event, program, or activity.

Proposed law changes present law by providing that the 12-month period shall begin following the date of payment to the dealer.

Proposed law provides that when a manufacturer or distributor disapproves a claim, a charge-back may not be applied to a claim related to parts installed on a repaired vehicle, unless the claim was intentionally false or fraudulent.

Proposed law provides that it shall be deemed an unfair act pursuant to present law to audit a dealer more frequently than once every 12 months.

Proposed law provides no claim may be rejected as late if it has been submitted within 90 days of the date the repair order was written.

(Amends R.S. 32:1261(6)(a) and 1262(B)(1); Adds R.S. 32:1262 (B)(5)-(7))