

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. 32:1254(A)(19) and (E)(9)(d), 1261(6)(a), and 1262(B)(1) and
3 (4) and to enact R.S. 32:1262(B)(5) through (7), relative to the sale and distribution
4 of motor vehicles; to exclude nonresident exhibitors from licensure by the Motor
5 Vehicle Commission; to exempt recreational products dealers from certain licensure,
6 franchise modification, and warranty requirements under certain circumstances; to
7 provide for certain prohibited acts involving franchise agreements; to provide
8 guidelines for audits of dealer records; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 32:1254(A)(19) and (E)(9)(d), 1261(6)(a), and 1262(B)(1) and (4)
11 are hereby amended and reenacted and R.S. 32:1262(B)(5) through (7) are hereby enacted
12 to read as follows:

13 §1254. Application for license; requirements for licensure; contents; licenses;
14 franchise filings

15 A. The following persons shall be licensed by the commission in order to
16 engage in business in the state of Louisiana, regardless of whether or not said person
17 maintains or has a place or places of business in this state, and it is a violation of this
18 Chapter to operate without first obtaining a license:

19 * * *

1 (19) Auto shows, trade shows, and exhibitions, including promoters ~~and~~
2 ~~nonresident exhibitors.~~

3 * * *

4 E. Additional licensing and compliance requirements for motor vehicle and
5 recreational products dealers.

6 * * *

7 (9)

8 * * *

9 (d) Notwithstanding any other provisions of law to the contrary, any motor
10 vehicle or recreational products dealer holding a license hereunder shall not be
11 required to obtain a license as a motor vehicle lessor, used motor vehicle dealer, or
12 specialty vehicle dealer or converter, when modifying or selling those vehicles or
13 products he is duly franchised and licensed to sell, provided such operations are
14 conducted from the location from which such motor vehicle or recreational products
15 dealer is licensed to do business.

16 * * *

17 §1261. Unauthorized acts

18 It shall be a violation of this Chapter:

19 * * *

20 (6) For any person or other licensee:

21 (a)(i) To modify a franchise during the term of the agreement or upon its
22 renewal if the modification substantially and adversely affects the franchisee's rights,
23 obligations, investment, or return on investment without giving sixty-day written
24 notice of the proposed modification to the licensee and the commission which
25 includes the grounds upon which the modification is based, unless the ~~modifications~~
26 ~~are~~ modification is required by law, court order, or the commission. Within the
27 sixty-day notice period the licensee may file with the commission a complaint for a
28 determination whether there is good cause for permitting the proposed modification.
29 The party seeking to modify or replace an agreement ~~must~~ shall demonstrate by a

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

6 (ii) With respect to recreational products, to modify a franchise during the
7 term of the agreement or upon its renewal if the modification substantially and
8 adversely affects the franchisee's rights, obligations, investment, or return on
9 investment without giving sixty-day written notice of the proposed modification to
10 the licensee and the commission unless the modifications are required by law, court
11 order, or the commission. Within the sixty-day notice period the licensee may file
12 with the commission a complaint for a determination whether there is good cause for
13 permitting the proposed modification. The party seeking to modify or replace an
14 agreement shall demonstrate by a preponderance of the evidence that there is good
15 cause for the modification or replacement. The commission shall schedule a hearing
16 within sixty days to decide the matter. Multiple complaints pertaining to the same
17 proposed modifications shall be consolidated for hearing. The proposed
18 modification may not take effect pending the determination of the matter.

19 * * *

20 §1262. Warranty; compensation; audits of dealer records

21 * * *

22 B.(1) Notwithstanding the terms of any franchise agreement, warranty, and
23 sales incentive, audits of dealer records may be conducted by the manufacturer,
24 distributor, distributor branch, or factory branch. Any audit for warranty parts or
25 service compensation shall be for the twelve-month period immediately following
26 the date of the payment of the claim by the manufacturer or distributor. However,
27 a dealer shall not be held liable by virtue of an audit for failure to retain parts for a
28 period in excess of six months. Any audit for sales incentives, service incentives,
29 rebates, or other forms of incentive compensation shall only be for the twelve-month

1 period immediately following the date of ~~the close of the promotion, event, program,~~
2 ~~or activity.~~ the final payment to the dealer under a promotion, event, program, or
3 activity. In no event shall the manufacturer, distributor, distributor branch, or factory
4 branch fail to allow the dealer to make corrections to the sales data in less than one
5 hundred twenty days from the program period. Additionally, no penalty other than
6 amounts advanced on a vehicle reported incorrectly shall be due in connection with
7 the audit. With respect to vehicles sold during the time period subject to the audit,
8 but submitted incorrectly to the manufacturer, distributor, or wholesale distributor
9 branch or factory branch, the dealer shall be charged back for the amount reported
10 incorrectly and credited with the amount due, if anything, on the actual sale date.

11 * * *

12 (4)(a) A dealer shall not be charged back on a claim when a dealer performs
13 a repair covered by the manufacturer's or distributor's warranty, and the dealer
14 reasonably demonstrates that the repair resolved the condition which the customer
15 presented for resolution, and the dealer documents what has been repaired and the
16 process utilized to accomplish the repair.

17 (b) The provisions of Subparagraph (a) of this Paragraph shall not apply to
18 recreational products dealers.

19 (5) Limitations on warranty parts or service compensation, sales incentive
20 audits, rebates, or other forms of incentive compensation, chargebacks for warranty
21 parts or service compensation, and service incentives and chargebacks for sales
22 compensation only shall not be effective in the case of intentionally false or
23 fraudulent claims.

24 (6) It shall be deemed an unfair act pursuant to this Chapter to audit a dealer
25 more frequently than two sales-related and two service-related audits in a twelve-
26 month period. Nothing in this Subsection shall limit a manufacturer's or distributor's
27 ability to perform routine claim reviews in the normal course of business.

28 (7) No claim may be rejected as late if it has been submitted within sixty
29 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 requires that certain persons be licensed by the Motor Vehicle Commission, including auto shows, trade shows, and exhibitions, which also includes promoters and nonresident exhibitors.

Proposed law repeals the requirement that nonresident exhibitors be licensed by the commission.

Present law provides for additional licensing and compliance requirements for motor vehicle and recreational products dealers.

Present law provides that a motor vehicle dealer holding a license shall not be required to obtain a license as a motor vehicle lessor, used motor vehicle dealer, or specialty vehicle dealer or converter, when modifying or selling those vehicles he is duly franchised and licensed to sell when such operations are conducted from the location from which the motor vehicle dealer is licensed to do business.

Proposed law retains present law but also exempts recreational products dealers from the requirement to obtain a license for the purposes of modifying or selling vehicles they are duly franchised and licensed to sell from the location from which the recreational products dealer is licensed to do business.

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 include the grounds upon which the modification is based. Proposed law exempts recreational products from proposed law franchise modification requirements.

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 final payment to the dealer under a promotion, event, program, or activity.

Proposed law provides that a dealer shall not be charged back on a claim when a dealer performs a repair covered by the manufacturer's or distributor's warranty, and the dealer reasonably demonstrates that the repair resolved the condition which the customer presented for resolution, and the dealer documents what has been repaired and the process utilized to accomplish the repair. Proposed law exempts recreational products dealers.

Proposed law provides that it shall be deemed an unfair act pursuant to present law to audit a dealer more frequently than two sales-related and two service-related audits in a 12-month period. Proposed law provides that nothing in proposed law shall limit a manufacturer's or distributor's ability to perform routine claim reviews in the normal course of business.

Proposed law provides no claim may be rejected as late if it has been submitted within 60 days of the date the repair order was written.

(Amends R.S. 32:1254(A)(19) and E(9)(d), 1261(6)(a), and 1262(B)(1) and (4); Adds R.S. 32:1262(B)(5)-(7))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Exempted nonresident exhibitor from licensure requirements by the Motor Vehicle Commission.
2. Exempted recreational products dealers from certain licensure requirements under certain circumstances.
3. Clarified that the 60-day notice to modify a franchise must include the grounds upon which the modification is based.
4. Provided that any audit for sales incentives, service incentives, and rebates shall only be for the 12-month period immediately following the date of final payment to the dealer under a promotion, event, program, or activity.
5. Provided that a dealer shall not be charged back on a claim when a dealer performs a repair covered by the manufacturer's or distributor's warranty and the dealer reasonably demonstrates that the repair resolved the condition which the customer presented for resolution and the dealer documents what has been repaired and the process utilized to accomplish the repair.
6. Provided for the frequency of audits.
7. Changed from 90 days to 60 days the time period within which a claim may be submitted before being rejected as late.
8. Made technical changes.

House Floor Amendments to the engrossed bill.

1. Made technical changes.
2. Exempted recreational products from proposed law requirements to modify franchise agreements.
3. Exempted recreational products dealers from proposed law provisions regarding the charging back of a claim.