

## BY REPRESENTATIVE CARMODY

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:

Section 1. R.S. 32:1254(A)(19) and (E)(9)(d), 1261(6)(a), and 1262(B)(1) and (4) are hereby amended and reenacted and R.S. 32:1262(B)(5) through (7) are hereby enacted 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 \* \* \*

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

\* \* \*

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

\* \* \*

(9)

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(d) Notwithstanding any other provisions of law to the contrary, any motor vehicle or recreational products dealer holding a license hereunder 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 or products he is duly franchised and licensed to sell, provided such operations are conducted from the location from which such motor vehicle or recreational products dealer is licensed to do business.

\* \* \*

## §1261. Unauthorized acts

It shall be a violation of this Chapter:

\* \* \*

(6) For any person or other licensee:

(a)(i) 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 sixty-day written notice of the proposed modification to the licensee and the commission which includes the grounds upon which the modification is based, unless the ~~modifications~~ modification is 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 ~~must~~ 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.

(ii) With respect to recreational products, 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 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.

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§1262. Warranty; compensation; audits of dealer records

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B.(1) Notwithstanding the terms of any franchise agreement, warranty, and sales incentive, audits of dealer records may be conducted by the manufacturer, distributor, distributor branch, or factory branch. Any audit for warranty parts or service compensation shall be for the twelve-month period immediately following the date of the payment of the claim by the manufacturer or distributor. However, a dealer shall not be held liable by virtue of an audit for failure to retain parts for a

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

13 \* \* \*

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

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

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

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

1                    (7) No claim may be rejected as late if it has been submitted within sixty  
2                    days of the date the repair order was written.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_