

Regular Session, 2011

ACT No. 89

HOUSE BILL NO. 261

BY REPRESENTATIVE CARMODY

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

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.

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

20 * * *

21 §1262. Warranty; compensation; audits of dealer records

22 * * *

23 B.(1) Notwithstanding the terms of any franchise agreement, warranty, and
24 sales incentive, audits of dealer records may be conducted by the manufacturer,
25 distributor, distributor branch, or factory branch. Any audit for warranty parts or
26 service compensation shall be for the twelve-month period immediately following
27 the date of the payment of the claim by the manufacturer or distributor. However,
28 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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____