

2022 Regular Session

SENATE BILL NO. 152

BY SENATOR ABRAHAM

MOTOR VEHICLES. Provides relative to certain unauthorized acts of motor vehicle manufacturers, distributors, wholesalers, distributor branches, factory branches, and converters. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 32:1261(A)(1)(l), relative to unauthorized acts of manufacturers,
3 distributors, wholesalers, distributor branches, factory branches, and converters; to
4 provide for protests; to provide for hearings performed by the Louisiana Motor
5 Vehicle Commission; to provide for terms, conditions, and procedures; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 32:1261(A)(1)(l) is hereby amended and reenacted to read as
9 follows:

10 §1261. Unauthorized acts

11 A. It shall be a violation of this Chapter:

12 (1) For a manufacturer, a distributor, a wholesaler, distributor branch, factory
13 branch, converter or officer, agent, or other representative thereof:

14 * * *

15 ~~(l) To condition the renewal or extension of a franchise on a new motor~~
16 ~~vehicle dealer's substantial renovation of the dealer's place of business or on the~~
17 ~~construction, purchase, acquisition, or rental of a new place of business by the new~~

1 ~~motor vehicle dealer, unless the manufacturer has advised the new motor vehicle~~
2 ~~dealer in writing of its intent to impose such a condition within a reasonable time~~
3 ~~prior to the effective date of the proposed date of renewal or extension, but in no case~~
4 ~~less than one hundred eighty days, and provided the manufacturer demonstrates the~~
5 ~~need for such demand in view of the need to service the public and the economic~~
6 ~~conditions existing in the motor vehicle industry at the time such action would be~~
7 ~~required of the new motor vehicle dealer. As part of any such condition the~~
8 ~~manufacturer shall agree, in writing, to supply the dealer with an adequate supply~~
9 ~~and marketable model mix of motor vehicles to meet the sales levels necessary to~~
10 ~~support the increased overhead incurred by the dealer by reason of such renovation,~~
11 ~~construction, purchase, or rental of a new place of business.~~

12 (i) To condition the renewal or extension of a franchise on a dealer's
13 substantial renovation of a facility or premises if the renovation would be
14 unreasonable under the circumstances.

15 (ii) To require or coerce, or attempt to coerce, a dealer or successor
16 dealer to construct or substantially alter a facility or premises if the
17 construction or alteration would be unreasonable under the circumstances.

18 (iii) To require or coerce, or attempt to coerce, a dealer or successor
19 dealer to construct or substantially alter a facility or premises if the same area
20 of the facility or premises has been constructed or substantially altered within
21 the last ten years and the construction or alteration was required and approved
22 by the manufacturer as a part of a facility upgrade program, standard, or
23 policy. The provisions of this Item shall not apply to any construction,
24 alteration, or improvement made to comply with any state or federal health or
25 safety law or to accommodate the technology requirements necessary to sell or
26 to service a motor vehicle. For the purposes of this Item, "substantially alter"
27 means an alteration that substantially impacts the architectural features,
28 characteristics, or integrity of a structure or lot. The term shall not include
29 routine maintenance reasonably necessary to maintain a dealership in attractive

1 condition or any item directly protected by federal intellectual property rights
2 of the manufacturer.

3 (aa) If a facility upgrade program, standard, or policy under which the
4 dealer completed a facility construction or substantial alteration does not
5 contain a specific time period during which the manufacturer or distributor
6 shall provide payments or benefits to a participating dealer, the manufacturer
7 or distributor shall not deny the participating dealer any payment or benefit
8 under the terms of the program, standard, or policy as it existed when the
9 dealer began to perform under the program, standard, or policy for the balance
10 of the ten-year period, regardless of whether the manufacturer's or distributor's
11 program, standard, or policy has been changed or canceled, unless the
12 manufacturer and dealer agree, in writing, to the change in payment or benefit.

13 (bb) As part of any facility upgrade program, standard, or policy, the
14 manufacturer or distributor shall agree, in writing, to supply the dealer with an
15 adequate supply and marketable model mix of motor vehicles to meet the sales
16 levels necessary to support the increased overhead incurred by the dealer by
17 reason of the facility construction or substantial alteration.

18 (iv) To require or coerce, or attempt to coerce, a dealer to purchase
19 goods or facility construction or maintenance services for items not
20 trademarked or otherwise directly protected by federal intellectual property
21 rights of the manufacturer from a vendor that is selected, identified, or
22 designated by a manufacturer, distributor, affiliate, or captive finance source
23 when the dealer may obtain goods or facility construction or maintenance
24 services for items not trademarked or otherwise directly protected by federal
25 intellectual property rights of the manufacturer of the same quality, material,
26 and design from a vendor selected by the dealer, provided the dealer obtains
27 prior approval from the manufacturer, distributor, or affiliate, for the use of
28 the dealer's selected vendor. The approval by the manufacturer, distributor, or
29 affiliate shall not be unreasonably withheld.

1 (aa) If the manufacturer, distributor, or affiliate does not approve the
 2 vendor chosen by the dealer and claims the vendor cannot supply goods or
 3 facility construction or maintenance services for items not trademarked or
 4 otherwise directly protected by federal intellectual property rights of the
 5 manufacturer that are the same quality, material, and design, the dealer may
 6 file a protest with the commission.

7 (bb) If a protest is filed, the commission shall promptly inform the
 8 manufacturer, distributor, affiliate, or captive finance source that a protest has
 9 been filed. The commission shall conduct a hearing on the merits of the protest
 10 within ninety days following the filing of a response to the protest. The
 11 manufacturer, distributor, or affiliate shall bear the burden of proving that the
 12 goods or facility construction or maintenance services for items not
 13 trademarked or otherwise directly protected by federal intellectual property
 14 rights of the manufacturer chosen by the dealer are not of the same quality,
 15 material, or design to those required by the manufacturer, distributor, or
 16 affiliate.

17 (cc) For the purposes of this Item, "goods" shall include signs or sign
 18 components to be purchased or leased by the dealer that are not trademarked
 19 or otherwise directly protected by the federal intellectual property rights of the
 20 manufacturer. The term shall not include moveable displays, brochures, and
 21 promotional materials containing material subject to the intellectual property
 22 rights of a manufacturer or distributor, special tools as reasonably required by
 23 the manufacturer, or parts to be used in repairs under warranty or recall
 24 obligations of a manufacturer or distributor.

25 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Michelle Ridge.

SB 152 Original

DIGEST
2022 Regular Session

Abraham

Present law provides for unauthorized acts of a motor vehicle manufacturer, distributor,

wholesaler, distributor branch, factory branch, or converter.

Present law prohibits a manufacturer, distributor, wholesaler, distributor branch, factory branch, converter, or officer, agent, or other representative thereof from conditioning the renewal or extension of a franchise on a dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the dealer, unless the manufacturer has advised the dealer of its intent to impose such condition within at least 180 days of the proposed date of renewal or extension and has met certain other conditions.

Proposed law removes present law prohibition and provides for the following unauthorized acts of a manufacturer, distributor, wholesaler, distributor branch, factory branch, converter, or officer, agent, or other representative thereof:

- (1) To condition the renewal or extension of a franchise on a dealer's substantial renovation of a facility or premises if the renovation would be unreasonable under the circumstances.
- (2) To require, coerce, or attempt to coerce, a dealer or successor dealer to construct or substantially alter a facility or premises if the construction or alteration would be unreasonable under the circumstances.
- (3) To require, coerce, or attempt to coerce, a dealer or successor dealer to construct or substantially alter a facility or premises if the same area of the facility or premises has been constructed or substantially altered within the last 10 years and the construction or alteration was required and approved by the manufacturer as a part of a facility upgrade program, standard, or policy. Excludes certain construction or alterations. Provides that a cancellation or change in a facility upgrade program, policy, or standard does not impact any payment and benefit to a dealer who was participating in that program prior to the cancellation or change in the program, unless agreed upon by the parties. Provides that as part of the program, policy, or standard the manufacturer or distributor shall agree to supply the dealer with an adequate supply and marketable model mix of motor vehicles to meet the sales levels necessary to support the increased overhead incurred by reason of the construction or alteration.
- (4) To require, coerce, or attempt to coerce, a dealer to purchase certain goods or facility construction or maintenance services from a vendor that is selected by a manufacturer, distributor, affiliate, or captive finance source when the dealer may obtain goods or facility construction or maintenance services for items of the same quality, material, and design from a vendor selected by the dealer, provided the dealer obtains prior approval from the manufacturer, distributor, or affiliate for the use of the dealer selected vendor. Provides for the filing of a protest with the commission if the vendor is not approved by the manufacturer and provides for that procedure.

Proposed law defines "substantially altered" and "goods".

Effective August 1, 2022.

(Amends R.S. 32:1261(A)(1)(l))