

SENATE BILL NO. 152

BY SENATOR ABRAHAM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§1261. Unauthorized acts

A. It shall be a violation of this Chapter:

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

* * *

~~(l)(i) To condition the renewal or extension of a franchise on a new motor vehicle 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 new motor vehicle dealer, unless the manufacturer has advised the new motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed date of renewal or extension, but in no case less than one hundred eighty days, and provided the manufacturer demonstrates the need for such demand in view of the need to service the public and the economic conditions existing in the motor vehicle industry at the time such action would be required of the new motor vehicle dealer. As part of any such condition the manufacturer shall agree, in writing, to supply the dealer with an adequate supply and marketable model mix of motor vehicles to meet the sales levels necessary to~~

1 support the increased overhead incurred by the dealer by reason of such renovation,
2 construction, purchase, or rental of a new place of business.

3 To condition the renewal or extension of a franchise on a dealer's
4 substantial renovation of a facility or premises, if the renovation would be
5 unreasonable under the circumstances.

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

9 (iii) To require, coerce, or attempt to coerce a dealer or successor dealer
10 to construct or substantially alter a facility or premises, if the same area of the
11 facility or premises has been constructed or substantially altered within the last
12 ten years and the construction or alteration was required and approved by the
13 manufacturer as a part of a facility upgrade program, standard, or policy. The
14 provisions of this Subparagraph shall not apply to any construction, alteration,
15 or improvement made to comply with any state or federal health or safety law,
16 a manufacturer's or distributor's health or safety requirement, or to
17 accommodate the technology requirements necessary to sell or to service a
18 motor vehicle. For the purposes of this Subparagraph, "substantially alter"
19 means to perform an alteration that substantially impacts the architectural
20 features, characteristics, or integrity of a structure or lot. The term shall not
21 include routine maintenance reasonably necessary to maintain a dealership in
22 attractive condition or any item directly protected by federal intellectual
23 property rights of the manufacturer.

24 (aa) If a facility upgrade program, standard, or policy under which the
25 dealer completed a facility construction or substantial alteration does not
26 contain a specific time period during which the manufacturer or distributor
27 shall provide payments or benefits to a participating dealer, the manufacturer
28 or distributor shall not deny the participating dealer any payment or benefit
29 under the terms of the program, standard, or policy as it existed when the
30 dealer began to perform under the program, standard, or policy for the balance

1 of the ten-year period, regardless of whether the manufacturer's or distributor's
2 program, standard, or policy has been changed or canceled, unless the
3 manufacturer and dealer agree, in writing, to the change in payment or benefit.

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

9 (iv) To require, coerce, or attempt to coerce a dealer to purchase facility
10 construction or maintenance goods or services for items not trademarked or
11 otherwise directly protected by federal intellectual property rights of the
12 manufacturer from a vendor that is selected, identified, or designated by a
13 manufacturer, distributor, affiliate, or captive finance source when the dealer
14 may obtain facility construction or maintenance goods or services for items not
15 trademarked or otherwise directly protected by federal intellectual property
16 rights of the manufacturer of the same quality, material, and design from a
17 vendor selected by the dealer, provided the dealer obtains prior approval from
18 the manufacturer, distributor, or affiliate, for the use of the dealer's selected
19 vendor. The approval by the manufacturer, distributor, or affiliate shall not be
20 unreasonably withheld.

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

27 (bb) If a protest is filed, the commission shall promptly inform the
28 manufacturer, distributor, affiliate, or captive finance source that a protest has
29 been filed. The commission shall conduct a hearing on the merits of the protest
30 within ninety days following the filing of a response to the protest. The

1 manufacturer, distributor, or affiliate shall bear the burden of proving that the
 2 facility construction or maintenance goods or services for items not
 3 trademarked or otherwise directly protected by federal intellectual property
 4 rights of the manufacturer chosen by the dealer are not of the same quality,
 5 material, or design to those required by the manufacturer, distributor, or
 6 affiliate.

7 (cc) For the purposes of this Subparagraph, "goods" shall include signs
 8 or sign components to be purchased or leased by the dealer that are not
 9 trademarked or otherwise directly protected by the federal intellectual property
 10 rights of the manufacturer or distributor. The term shall not include moveable
 11 displays, brochures, and promotional materials containing material subject to
 12 the intellectual property rights of a manufacturer or distributor, special tools
 13 as reasonably required by the manufacturer, or parts to be used in repairs
 14 under warranty or recall obligations of a manufacturer or distributor.

15 * * *

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____