
HOUSE COMMITTEE AMENDMENTS

2015 Regular Session

Substitute for Original House Bill No. 594 by Representative Henry as proposed by the House Committee on Commerce

To amend and reenact R.S. 32:1252(12), (23), (25), (26), and (46)(introductory paragraph), 1254(G)(4) and (N), 1256.1, 1257(C) and (D)(2), 1258(A)(introductory paragraph) and (6), 1261(A)(1)(n) and (r), 1264, 1270.5(A), (C), (D)(introductory paragraph), (E), and (J), 1270.17(A)(1)(introductory paragraph) and (c), and (B), and 1270.29(A)(1)(c) and (B), relative to the distribution and sale of vehicles; to provide for definitions; to modify insurance requirements imposed on satellite warranty and repair centers; to provide for specialty vehicle shows; to modify procedural requirements relative to protests; to exempt trailers from certain requirements relative to unauthorized acts; to specify damage disclosure requirements relative to new motor vehicles; to modify procedural requirements relative to the termination or failure to renew a marine dealer franchise; to authorize the Louisiana Motor Vehicle Commission to maintain the license of a marine dealer in limited circumstances; to modify repurchasing requirements relative to both motorcycle dealers and all-terrain vehicle dealers; to modify repurchasing requirements relative to recreational vehicles; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:1252(12), (23), (25), (26), and (46)(introductory paragraph), 1254(G)(4) and (N), 1256.1, 1257(C) and (D)(2), 1258(A)(introductory paragraph) and (6), 1261(A)(1)(n) and (r), 1264, 1270.5(A), (C), (D)(introductory paragraph), (E), and (J), 1270.17(A)(1)(introductory paragraph) and (c), and (B), and 1270.29(A)(1)(c) and (B) are hereby amended and reenacted to read as follows:

§1252. Definitions

The following words, terms, and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

* * *

(12) "Distributor" or "wholesaler" means any person, resident or nonresident, who in whole or in part sells or distributes ~~motor~~ vehicles, new, remanufactured, reconditioned, or rebuilt motor vehicle motors, ~~or recreational products~~ to ~~motor vehicle or recreational products~~ dealers, or who maintains distributor representatives.

* * *

(23) "Low-speed vehicle" means a four-wheeled, ~~electric powered~~ vehicle with a maximum speed of not less than twenty miles per hour but not more than twenty-five miles per hour that possesses the minimum motor vehicle equipment appropriate for vehicle safety as required by 49 CFR 571.500.

* * *

(25) "Marine dealer" means any person who holds a bona fide contract or franchise with a manufacturer or distributor of marine products, except for a person engaged in the business of renting or selling new or used watercraft or boats adapted to be powered only by an occupant's energy, and who holds a license as a ~~marine recreational products dealer~~ under pursuant to the provisions of this Chapter.

(26) "Marine motor" or "marine engine" means a motor that is a component of a marine product that is sold separately from a boat when delivered to the marine dealer by the distributor or manufacturer.

* * *

(46) "Recreational products dealer" means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, buys, sells, brokers, exchanges, auctions, offers, or attempts to negotiate a sale or exchange of an interest in recreational products and who is engaged wholly or in part in the business of buying and selling recreational products in the state of Louisiana. Duly franchised and licensed recreational products dealers shall be the only persons entitled to sell, publicly solicit, and advertise the sale of new recreational products.

* * *

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

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G. Additional licensing and compliance requirements for satellite warranty and repair centers.

* * *

(4)(a) All satellite warranty and repair centers shall, within the contents of their application for a license pursuant to this Chapter, furnish evidence that they currently have garage liability insurance or liability protection provided by a liability trust fund as authorized by R.S. 22:46(9)(d) covering their place of business. The required insurance policy or liability protection shall have limits of not less than one hundred thousand dollars for bodily injury to one person, three hundred thousand dollars per accident, and fifty thousand dollars for property damage that the applicant maintains an insurance policy, which complies with the financial responsibility laws of Louisiana, that covers both its place of business and its operation and that the applicant maintains any additional insurance policy determined to be necessary, either relative to the place of business or relative to the nature of the operation sought to be licensed, to protect both the applicant and relevant consumers.

(b) Said The insurance or liability protection required pursuant to this Paragraph shall be maintained throughout the period of licensure.

(c) Any Failure failure to maintain such the insurance or liability protection required pursuant to this Paragraph shall result in the immediate suspension of license; which The suspension shall be effective as of the date of said the failure to maintain said the liability insurance coverage or liability protection and remains effective until proof of the required garage liability insurance or liability protection is furnished to the commission. Should If no proof of insurance or liability protection provided by a liability trust fund as authorized by R.S. 22:46(9)(d) be is furnished to the commission within thirty days, the license of said the licensee shall be revoked.

* * *

N. Any person who sells or offers to sell ~~new motor vehicles, recreational products, or specialty vehicles, or leases, rents, or offers to lease or rent new motor vehicles, recreational products, or specialty vehicles, or conducts and designs~~

advertising or participates in special sales events on behalf of licensees, and which is not a licensee of the commission shall, nonetheless, be subject to the provisions of Chapter 6 of Title 32 and the rules and regulations of the commission.

* * *

§1256.1. Regional recreational products or specialty vehicle shows

A.(1) Shows where recreational products or specialty vehicles are displayed and promoted for sale are hereby authorized as provided for in this Section, except that no final sale and delivery of a recreational product or specialty vehicle shall occur at ~~such~~ these ~~show~~ shows except by ~~licensed Louisiana~~ dealers whose areas of responsibility for the brand of recreational products they represent include the ~~location of the show~~ licensed pursuant to this Chapter.

(2) When used in this Section, the following words and phrases have the meanings ascribed to them in this Paragraph:

(a) "Nonresident" or "non-Louisiana" means a dealer, distributor, or manufacturer who holds a current license in another state.

(b) "Producer" means a person who alone or with others assumes the financial responsibility of a recreational product or specialty vehicle show at which recreational products or specialty vehicles are displayed by dealers, manufacturers, ~~or distributors, or converters~~. A producer shall be licensed as a promoter pursuant to R.S. 32:1254.

(c) "Product line" means a specific series of recreational vehicle products or specialty vehicles that are identified by a common series trade name or trademark and for which the manufacturer, converter, or dealer agreement authorizes a dealer to sell.

(d) "Rally" means an event not opened to the general public held and organized by recreational product clubs of specific products owners or manufacturers of specific products where owners of ~~such~~ the products are members of the club and are invited to participate in the event.

(e) "Regional recreational product or specialty vehicle show" or "show" means a controlled event at which a producer charges or barter for booth space or

charges spectator entrance, or both, and where three or more recreational product dealers, specialty vehicle dealers, distributors, ~~or~~ manufacturers, or converters exhibit recreational products or specialty vehicles. It does not include a rally or a national recreational product show as defined in R.S. 32:1256.2.

B. Participation in regional recreational product or specialty vehicle shows is limited to recreational products dealers, specialty vehicle dealers, distributors, ~~or~~ manufacturers, or converters who are licensed in Louisiana pursuant to this Chapter, except as provided in Subsections C and D of this Section.

C. Nonresident recreational products dealers, specialty vehicle dealers, distributors, ~~or~~ manufacturers, or converters who hold a current equivalent license in another state may participate in a regional recreational products or specialty vehicle show in Louisiana, ~~provided~~ if all of the following criteria are satisfied:

(1) Louisiana recreational products or specialty vehicle dealers, whose area of responsibility for the brands they represent includes the location of the show, have been given first option on space at the show.

(2) Louisiana recreational products or specialty vehicle dealers, whose area of responsibility does not include the location of the show, have been given second option on space at the show, provided that the dealers shall not show the same brand of recreational product or specialty vehicle as shown by a participating Louisiana recreational products or specialty vehicle dealer whose area of responsibility includes the location of the show.

(3) Non-Louisiana recreational products or specialty vehicle dealers, distributors, and manufacturers shall not show the same brand of recreational products or specialty vehicles as shown by participating Louisiana recreational products or specialty vehicle dealers.

(4) Non-Louisiana recreational products or specialty vehicle dealers, distributors, ~~and~~ manufacturers, and converters shall register their participation with the commission not later than ten business days prior to the date of the show. To register, each non-Louisiana recreational products dealer, specialty vehicle dealer, distributor, ~~and~~ manufacturer, and converter shall submit its name, address, a copy

of its current equivalent license from the state of its domicile, and a fee of two hundred fifty dollars to the commission.

(5) Non-Louisiana recreational products dealers, specialty vehicle dealers, distributors, ~~and~~ manufacturers, and converters shall disclose to show attendees the location of where warranty repairs would be made for products it has on display at the show.

D. Notwithstanding any provision of law to the contrary, no recreational vehicle dealer, specialty vehicle dealer, distributor, ~~or~~ manufacturer, or converter shall participate in any regional recreational product or specialty vehicle show where its product line of recreational vehicles or specialty vehicles is represented by a dealer whose area of responsibility includes the location of the show, whether or not that dealer participates in the show.

E. The provisions of this Section shall not apply to a rally held in this state.

F. The commission may adopt rules and regulations consistent with the provisions of this Section in accordance with the Administrative Procedure Act.

* * *

§1257. Establishment of new motor vehicle dealerships ~~and/or~~ or relocations; protests; procedure

* * *

C. The objection shall be in writing, and shall be received by the commission within a fifteen-day period after receipt of the notice. ~~Said~~ The fifteen-day objection period shall be waived upon written notification to the commission from all licensees, who are entitled to object, that ~~said~~ the licensees have no objections to the proposed change or addition for which ~~said~~ the notice of intent was issued. If timely objection is lodged, and prior to the issuance of the license, the commission shall hold a hearing within thirty days after receipt of the objection, or forty-five days after the request is made for the three-member panel, and issue its decision within ninety days after date of ~~said~~ the hearing. Notice of hearing, and an opportunity to participate therein, shall be given to the ~~motor vehicle dealer~~ manufacturer or distributor, to the applicant for the license as a motor vehicle dealer, and to the

protesting dealership or dealerships. The absence of a timely protest shall not prevent the commission from considering the effect of the issuance of a license ~~on other motor vehicle dealerships located either within or~~ on other motor vehicle dealerships, located either within or outside the community or territory as part of its determination of whether or not the license sought should be issued.

D.

* * *

(2) The applicant and ~~motor vehicle dealer~~ manufacturer or distributor shall have the burden of proof in demonstrating good cause by a preponderance of the evidence.

§1258. Denial, revocation, grounds, imposition of a civil penalty, or suspension of license; grounds; expiration

A. The commission may, in addition to imposing a civil penalty ~~under~~ pursuant to the provisions of this Chapter, deny an application for a license; or revoke or suspend a license after it has been granted for any ~~one~~ of the following reasons:

* * *

(6) For any violation of any law relating to the sale, lease, ~~or~~ rental, distribution, or financing of ~~motor~~ vehicles.

* * *

§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:

* * *

(n) To fail to designate and provide to the commission in writing either the community or territory assigned to a licensee. The provisions of this Subparagraph shall not apply to trailers.

* * *

(r) To demand compliance with facilities requirements that include any requirements that a motor vehicle dealer establish or maintain exclusive office, showroom, parts, service or body shop facilities, unless ~~such~~ the requirements would be reasonable and justified by business considerations. The burden of proving that ~~such~~ the requirements are reasonable and justified by business considerations is on the manufacturer. If the franchise agreement of the manufacturer or distributor requires the approval of the manufacturer or distributor for facility uses or modifications, the manufacturer or distributor shall approve or disapprove such a request in writing within sixty days of receipt of such request.

* * *

§1264. Damage disclosure

A. Whenever a new motor vehicle subject to regulation pursuant to this Chapter is sold to any person, the seller shall notify the purchaser of any body damage or mechanical damage which the vehicle has sustained that exceeds six percent of the manufacturer's suggested retail price ~~or, in the case of recreational vehicles, six percent of the manufacturer's wholesale price.~~ The notice shall be in writing and a copy thereof shall be delivered to the purchaser prior to or simultaneous with transfer of the vehicle title.

~~B.—Replacement of a new recreational vehicle's instrument panels, appliances, furniture, cabinetry, televisions, audio equipment, or similar residential components shall not be deemed "damage" pursuant to this Section if such the items are replaced with original manufacturers' parts and materials.~~

~~C.~~ This Section shall apply to all instances of vehicular body or mechanical damage to vehicles and to all actions involving such damage, notwithstanding the application of other codal, statutory, or regulatory provisions, including but not limited to Civil Code Articles 2520 et seq.

~~D.—The provisions of this Section shall not apply to marine products, motorcycles, or all-terrain vehicles, or recreational vehicles.~~

* * *

§1270.5. Manufacturer, distributor, or wholesaler repurchase; marine dealer; products

A. If any marine dealer enters into a franchise with a manufacturer, distributor, or wholesaler wherein the marine dealer agrees to maintain an inventory of marine products or repair parts, the manufacturer, distributor, or wholesaler shall not terminate or fail to renew ~~such~~ the franchise unless there is a breach of the franchise by the marine dealer and until ninety days after notice of ~~such~~ the intention to terminate, including the breach of the franchise, has been sent by certified mail, return receipt requested, or commercial delivery service with verification of receipt, to the marine dealer and the commission and the marine dealer has failed to correct the breach within such period.

* * *

C. (1) It shall be unlawful for the manufacturer, wholesaler, or distributor, without due cause and pursuant to its own initiating action, to terminate or fail to renew a franchise, unless the manufacturer, wholesaler, or distributor repurchases the new and unused inventory as provided for in this Section.

(2) In the event the marine dealer has new and unused inventory not eligible for repurchase, the license issued by the commission may remain in effect pursuant to the provisions of R.S. 32:1268.2.

D. It shall not be unlawful for the marine dealer with due cause and pursuant to the marine dealer's own initiating action to terminate or fail to renew a franchise with a manufacturer, wholesaler, or distributor, and the manufacturer, wholesaler, or distributor shall repurchase inventory as provided by this Section. To determine what constitutes due cause for a marine dealer to terminate or fail to renew a franchise, the following factors regarding the manufacturer, wholesaler, distributor or representative of one of the so named shall include whether the manufacturer, wholesaler, distributor, or representative of one of the so named:

* * *

E. If a manufacturer, distributor, or wholesaler does not intend to renew a franchise, the manufacturer, distributor, or wholesaler shall give the marine dealer

and the commission ninety days written notice prior to the effective date by certified mail, return receipt requested, or commercial delivery service with verification of receipt.

* * *

J. If a marine dealer completes a bona fide, orderly, and permanent closure of the marine dealership, which does not involve a sale of the dealership, and provides at least ninety days notice to the manufacturer, wholesaler, ~~or distributor,~~ and the commission, the marine products and parts inventory shall be repurchased by the manufacturer, wholesaler, or distributor in the manner provided for in this Section, ~~when a franchise is terminated as result of action by the manufacturer, wholesaler, or distributor.~~

* * *

§1270.17. Requirements upon termination; penalty; indemnity; motorcycle or all-terrain vehicle dealers

A.(1) In the event the licensee ceases to engage in the business of being a motorcycle dealer or all-terrain vehicle dealer, or ceases to sell a particular make of motorcycle or all-terrain vehicle and after notice to the manufacturer, converter, distributor, or representative by certified mail or commercial delivery service with verification of receipt, within thirty days of the receipt of the notice by the manufacturer, converter, distributor, or representative, the manufacturer, converter, distributor, or representative shall repurchase:

* * *

(c) At fair market value, all special tools and ~~automotive~~ service equipment owned by the motorcycle dealer or all-terrain vehicle dealer which were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, converter, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear. Fair market value shall be no less than cost of acquisition of special tools and ~~automotive~~ service equipment by the motorcycle dealer or all-terrain vehicle dealer.

* * *

B. Failure to make ~~such~~ the repurchase without just cause shall subject the manufacturer or converter to a penalty of one and one-half percent per month, or fraction thereof, of the inventory value or returnable motorcycles or all-terrain vehicles, and parts, signs, special tools, and ~~automotive~~ service equipment, payable to the dealer, as long as the repurchase is not made.

* * *

§1270.29. Requirements upon termination; penalty; indemnity; recreational vehicles

A.(1) In the event the licensee ceases to engage in the business of being a recreational vehicle dealer, or ceases to sell a particular recreational vehicle, and after notice to the manufacturer, converter, distributor, or representative by certified mail or commercial delivery service with verification of receipt, within thirty days of the receipt of the notice by the manufacturer, converter, distributor, or representative, the manufacturer, converter, distributor, or representative shall repurchase:

* * *

(c) At fair market value, all special tools and ~~automotive~~ service equipment owned by the recreational vehicle dealer, which were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, converter, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear. Fair market value shall be no less than the cost of acquisition of special tools and automotive service equipment by the recreational vehicle dealer.

* * *

B. Failure to make ~~such~~ the repurchase without just cause shall subject the manufacturer or converter to a penalty of one and one-half percent per month, or fraction thereof, of the inventory value or returnable recreational vehicles, and parts, signs, special tools, and ~~automotive~~ service equipment, payable to the dealer, as long as the repurchase is not made.

* * *

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)]

HB Draft

2015 Regular Session

Abstract: Amends various regulations relative to the sale and distribution of vehicles and relative to the dealers thereof.

Proposed law makes technical changes.

Present law defines as identical the terms "distributor" and "wholesaler". Proposed law broadens the definition of "distributor" and "wholesaler" by expanding its applicability from "motor vehicles" to "vehicles". Present law defines "low-speed vehicle". Proposed law removes the element "electric-powered" from the definition of "low-speed vehicle". Present law defines "marine dealer", in part, as applicable to any person who holds a license as a marine dealer pursuant to present law. Proposed law modifies the definition of "marine dealer" by changing the applicability, in part, to any person who holds a license as a recreational products dealer pursuant to present law. Present law defines "marine motor". Proposed law includes and defines "marine engine" as identical to the term "marine motor". Present law defines "recreational products dealer". Proposed law adds a qualifying sentence to present law, which indicates that duly franchised and licensed recreational products dealers, as defined by present law, shall be the only persons who are entitled to sell, publicly solicit, and advertise the sale of new recreational products.

Present law requires that satellite warranty and repair centers furnish evidence of maintaining certain insurance coverages or other liability protections, specifically including garage liability insurance. Present law requires that those required insurance coverages or other liability protections shall have limits of not less than \$100,000 for bodily injury to one person, \$300,000 per accident, and \$50,000 for property damage. Proposed law requires that satellite warranty and repair centers furnish evidence of maintaining certain insurance coverages within the contents of their application for license. Proposed law removes all references to any specifically required dollar amounts and any specifically required classifications of insurance coverage. Proposed law requires all satellite warranty and repair centers to maintain an insurance policy, which covers both its place of business and its operation, that complies with the financial responsibility laws of Louisiana and that includes a limit in an amount determined to be necessary to protect both the applicant and any relevant consumers.

Present law imposes the provisions of present law (Chapter 6 of Title 32) on any person who sells or offers to sell new motor vehicles, recreational products, or specialty vehicles, or leases, rents, or offers to lease or rent new motor vehicles, recreational products, or specialty vehicles, or conducts and designs advertising or participates in special sales events on behalf of licensees, and which is not a licensee of the commission. Proposed law imposes the provisions of present law (Chapter 6 of Title 32) on any person who sells or offers to sell vehicles, or leases, rents, or offers to lease or rent vehicles, or conducts and designs advertising or participates in special sales events on behalf of licensees, and which is not a licensee of the commission.

Present law regulates regional recreational products shows. Proposed law adds and regulates regional specialty vehicle shows. Proposed law regulates the participation of specialty vehicle dealers and converters in these regional shows.

Present law requires that notice of hearing, and an opportunity to participate therein, shall be given to a motor vehicle dealer or distributor, to the applicant for the license as a motor vehicle dealer, and to the protesting dealership or dealerships relative to present law

regulating the establishment or relocation of motor vehicle dealerships. Proposed law requires that notice of hearing, and an opportunity to participate therein, shall be given to the manufacturer or distributor, to the applicant for the license as a motor vehicle dealer, and to the protesting dealership or dealerships. Present law requires that the applicant and motor vehicle dealer or distributor shall have the burden of proof in demonstrating good cause by a preponderance of the evidence. Proposed law requires that the applicant and manufacturer or distributor shall have the burden of proof in demonstrating good cause by a preponderance of the evidence.

Present law authorizes the Louisiana Motor Vehicle Commission ("commission") to impose civil penalties, deny an application for license, or revoke or suspend a license for any violation of any law relating to the sale, lease, rental, distribution, or financing of motor vehicles. Proposed law broadens that authorization to be applicable to vehicles rather than motor vehicles.

Present law deems that it shall be a violation of present law for a manufacturer, distributor, wholesaler, distributor branch, factory branch, converter or officer, agent, or other representative thereof to fail to designate and provide to the commission in writing either the community or territory assigned to a licensee. Proposed law exempts trailers from this provision of present law. Present law deems that it shall be a violation of present law for a manufacturer, distributor, wholesaler, distributor branch, factory branch, converter or officer, agent, or other representative thereof to demand compliance with facilities requirements that include any requirements that a motor vehicle dealer establish or maintain exclusive office, parts, service or body shop facilities, unless the requirements would be reasonable and justified by business considerations. Proposed law adds showrooms to the list exempted from compliance with facilities requirements unless the requirements would be reasonable and justified by business considerations.

Present law regulates the damage disclosure information that a seller of a new vehicle must provide to a purchaser. Proposed law narrows the regulations imposed by present law to new motor vehicles; however, damage disclosure requirements relative to marine products, motorcycles, all-terrain vehicles, and recreational vehicles are provided for in other provisions of present law.

Present law requires a manufacturer, wholesaler, distributor, or its representative who terminates or fails to renew a marine dealer franchise to provide 90 days written notice prior to the effective date by certified mail, return receipt requested, or commercial delivery service with verification of receipt to the marine dealer. Proposed law requires a manufacturer, wholesaler, distributor, or its representative who terminates or fails to renew a marine dealer franchise to provide 90 days written notice prior to the effective date by certified mail, return receipt requested, or commercial delivery service with verification of receipt to the marine dealer and the commission.

Proposed law authorizes the commission to maintain a marine dealer license pursuant to other provisions of present law in the event that the marine dealer has new and unused inventory that is not eligible for repurchase relative to the termination or failure to renew a marine dealer franchise.

Present law requires a marine dealer who completes a bona fide, orderly, and permanent closure of the marine dealership to provide at least 90 days notice to the manufacturer, wholesaler, or distributor. Proposed law requires a marine dealer who completes a bona fide, orderly, and permanent closure of the marine dealership to provide at least 90 days notice to the manufacturer, wholesaler, or distributor and the commission.

Present law regulates the circumstances in which a manufacturer, converter, distributor, or representative thereof shall repurchase automotive service equipment relative to motorcycle dealers and all-terrain vehicle dealers. Proposed law broadens those regulations making present law applicable to service equipment relative to motorcycle dealers and all-terrain vehicle dealers.

Present law regulates the circumstances in which a manufacturer, converter, distributor, or representative thereof shall repurchase automotive service equipment relative to recreational vehicle dealers. Proposed law broadens those regulations making present law applicable to service equipment relative to recreational vehicle dealers.

(Amends R.S. 32:1252(12), (23), (25), (26), and (46)(intro. para.), 1254(G)(4) and (N), 1256.1, 1257(C) and (D)(2), 1258(A)(intro. para.) and (6), 1261(A)(1)(n) and (r), 1264, 1270.5(A), (C), (D)(intro. para.), (E), and (J), 1270.17(A)(1)(intro. para.) and (c), and (B), and 1270.29(A)(1)(c) and (B))