LOUISIANA REVISED STATUTES
TITLE 32. MOTOR VEHICLES AND TRAFFIC REGULATION

Current through the 2013 Regular Session

CHAPTER 6. PART 1
GENERAL PROVISIONS APPLICABLE TO MOTOR VEHICLES AND RECREATIONAL PRODUCTS

§1251. Declaration of public policy

The legislature finds and declares that the distribution and sale of motor vehicles and recreational products in the state of Louisiana vitally affects the general economy of the state, the public interest, and the public welfare, and that in order to promote the public interest, and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license those persons enumerated in R.S. 32:1254 and doing business in Louisiana, in order to prevent frauds, impositions, and other abuses upon its citizens, and avoid undue control of the independent motor vehicle dealer and recreational products by their motor vehicle manufacturing and distributive organizations and foster and keep alive vigorous and healthy competition, by prohibiting unfair practices by which fair and honest competition is destroyed or prevented, and to protect the public against the creation or perpetuation of monopolies and practices detrimental to the public welfare, to prevent the practice of requiring the buying, leasing, or renting of special features, appliances, and equipment not desired or requested by the purchaser, lessee, or renter, to prevent false and misleading advertising, to prevent unfair practices by said licensees, to promote the public safety and prevent disruption of the system of distribution of motor vehicles and recreational products to the public and prevent deterioration of facilities for servicing motor vehicles and keeping same safe and properly functioning, and prevent bankrupting of motor vehicle and recreational products dealers and lessors, who might otherwise be caused to fail because of such unfair practices and competition, thereby resulting in unemployment, disruption of leases, and nonpayment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

Acts 1985, No. 911, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2009, No. 403, §1, eff. July 7, 2009.

§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:

(1) "All-terrain vehicle" **shall mean any vehicle manufactured for off-road use and issued a manufacturer's statement or certificate of origin, as required by the commission, that cannot be issued a registration certificate and license to operate on the public roads of this state because, at the time of manufacture, the vehicle does not meet the safety requirements prescribed by R.S. 32:1301 and through 1310. This includes vehicles that are issued a title by the Department of Public Safety and Corrections, public safety services, such as recreational and sports vehicles, but it does not include off-road vehicles used for farm purposes, farm equipment, or heavy construction equipment.**

(2) "Ambulance" means a vehicle used exclusively for providing emergency and nonemergency medical care to an injured or ill person or transporting an injured or ill person, if the vehicle provides all of the following:

(a) A driver's compartment.

(b) A compartment to accommodate an emergency medical care technician or paramedic and two injured or ill persons so positioned that one of the injured or ill persons can be given intensive lifesupport during transit.

(c) Equipment and supplies for emergency care of an injured or ill person where the ill person is located or at the scene of an injury-producing incident as well as in transit.

(d) Two-way radio communication capability.

(e) Equipment for light rescue or extrication procedures.

(3) "Boat" means a component of a marine product that is not equipped with an outboard or inboard/outboard motor attached thereto.

(4) "Boat package" means a boat that is equipped from its manufacturer or distributor with an inboard, outboard, or inboard/outboard motor or engine attached thereto, installed thereon, or shipped or invoiced together as a package. The boat package may include a trailer invoiced from the manufacturer of the boat. For the purposes of this Chapter, the boat package brand shall be determined by the brand of the boat.

(5) "Broker" means a person who, for a fee or commission, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle or recreational product, and who is not:

(a) A motor vehicle dealer or recreational products dealer, or bona fide employee of a motor vehicle dealer, when acting on behalf of a motor vehicle or recreational products dealer.

(b) A manufacturer, distributor, convertor, or bona fide employee of a manufacturer, distributor, or convertor, when acting on behalf of a manufacturer, distributor, or convertor.

(c) At any point in the transaction, the bona fide owner of the motor vehicle or recreational product involved in the transaction.

(6) "Commission" means the Louisiana Motor Vehicle Commission created by this Chapter or its designee.

(7) "Community or territory" or "area of responsibility" shall mean the licensee's area of principal sales and service responsibility as specified by the franchise in effect with any licensee of the commission.

(a) The area of responsibility of a licensee shall not be comprised of an area less than the applicable area provided for in **Subparagraph** (b) of this Paragraph, unless approved by the commission pursuant to the provisions of this Chapter, or if, on August 15, 2001, such dealer had an effective contractual agreement for a smaller area of responsibility.

(b) A marine dealer's area of responsibility shall mean the marine dealer's area of principal sales and service responsibility as specified by the contract, franchise, or selling agreement in effect with the manufacturer or distributor. The marine manufacturer or distributor shall designate and provide to the commission in writing the marine dealer's area of responsibility when the contract is granted or, should there be contracts in existence on August 15, 2004, without such designation, the commission shall require the manufacturer or distributor to designate the area of responsibility. The manufacturer or distributor shall adopt uniform procedures to establish the area of responsibility that is assigned to a marine dealer. The uniform procedures shall include market research information from identified credible industry sources that project product sales of the brand of marine product for which the contract or franchise agreement is granted. In the absence of such designation by the manufacturer or distributor, or in the event that the area of responsibility designated by the manufacturer or distributor is rejected by the commission and such decision by the commission is affirmed on appeal, the marine dealer's area of responsibility shall mean either of the following:

(i) The area within a fifteen-mile radius of the dealership if the dealership is located in a parish containing a population of three hundred thousand persons or more.

(ii) The area within a thirty-mile radius of the dealership if the dealership is located in a parish containing a population of less than three hundred thousand persons.

(c) Repealed.

(8) "Converter" or "secondary manufacturer" means a person who prior to the retail sale of motor vehicles **or trailers**, assembles, installs, or affixes a body, cab, or special equipment to a chassis, or who substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle **or trailer**.

(9) “Dealer” means any person licensed to sell a motor vehicle, specialty vehicle, or recreational product subject to regulation by this Chapter.

(10) "Dealer-operator" shall mean the natural person designated in the franchise as the operator of a motor vehicle dealership.

(11) "Designated successor" means the spouse, child, grandchild, parent, brother, or sister, of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; the spouse, or other person who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership, such designation having been furnished to the manufacturer; or the spouse, or other person who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court in a proceeding interdicting the dealer as the legal representative of the dealer's property. The terms shall also include the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

(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.

(13) "Distributor branch" means a branch office maintained by a person, resident or nonresident, who in whole or in part sells or distributes motor vehicles or recreational products to motor vehicle or recreational products dealers, or for directing or supervising, in whole or in part, its representatives.

(14) "Distributor representative" means any officer, agent, or employee employed by a distributor, distributor branch, or wholesaler.

(15) "Established place or established place of business" shall mean a permanently enclosed building or structure either owned, leased, or rented, which meets local zoning or municipal requirements, and regularly occupied by a person, easily accessible to the public at which the regular business of a licensee will be carried on in good faith, and, at which place of business shall be kept and maintained the books, records, and files necessary to conduct the business; and shall not mean residences, tents, temporary stands, lots, or any temporary quarters.

(16) "Factory branch" means a branch office maintained by a person who fabricates, manufactures, or assembles motor vehicles or recreational products, for the sale of motor vehicles or recreational products to distributors, or for the sale of motor vehicles or recreational products to motor vehicle or recreational products dealers, or for directing or supervising, in whole or in part, its representatives.

(17) "Factory representative" means any officer, agent, or employee employed by a person who fabricates, manufactures, or assembles motor vehicles or recreational products, or by a factory branch, for the purpose of making or promoting the sale of his, its, or their motor vehicles or recreational products, or for supervision or contacting his, its, or their dealers or prospective dealers.

(18) "Financial institution" means any person organized to engage in the business of banking pursuant to the laws of the United States or Title 6 of the Louisiana Revised Statutes of 1950.

(19) "Fire truck" means any one of the following:

(a) A pumper fire apparatus, which is a vehicle equipped with a permanently mounted fire pump of 750 gpm (2850 L/min) rated capacity or greater, a water tank of at least 500 gal (1900 L), and hose body. The primary purpose of this type of apparatus is to combat structural and associated fires.

(b) An initial attack fire apparatus, which is a vehicle equipped with an attack pump of 250 through 700 gpm (950 through 2650 L/min), a water tank, and minimum hose and equipment, that is designed primarily for rapid response and initiating a fire attack on structural, vehicular, or vegetation fires and supporting associated fire department operations.

(c) A mobile water supply fire apparatus, which is a vehicle equipped with a water tank of at least 1000 gal (3800 L) and designed primarily for transporting water to fire emergency scenes to be applied by other vehicles or pumping equipment.

(d) An aerial ladder and elevating platform fire apparatus, which is a vehicle equipped with a permanently mounted, power-operated aerial ladder or with a passenger carrying platform attached to the uppermost boom of a series of telescoping, articulating, or telescoping and articulating booms and designed to provide rescue capability from elevated positions and the positioning of firefighters and elevated master streams for fire suppression tasks.

(20) "Franchise" means any written contract or selling agreement between a motor vehicle or recreational products dealer, a motor vehicle lessor, or a specialty vehicle dealer and a manufacturer, motor vehicle lessor franchisor, or converter of a new motor vehicle or specialty vehicle or its distributor or factory branch by which the motor vehicle or recreational products dealer, motor vehicle lessor, or specialty vehicle dealer is authorized to engage in the business of selling or leasing the specific makes, models, or classifications of new motor vehicles, recreational products, or specialty vehicles marketed or leased by the manufacturer, motor vehicle lessor franchisor, or converter and designated in the franchise agreement or any addendum thereto. For purposes of this Chapter, any written modification, amendment, or addendum to the original franchise agreement, which changes the rights and obligations of the parties to the original franchise agreement, shall constitute a new franchise agreement, effective as of the date of the modification, amendment, or addendum.

(21) "Lease facilitator" means a person, other than a motor vehicle or recreational products dealer or a bona fide employee of a motor vehicle or recreational products dealer, or a motor vehicle lessor or a bona fide employee of a motor vehicle lessor, who engages in one or both of the following activities:

(a) Holds himself out to any person as a "motor vehicle leasing company" or "motor vehicle leasing agent" or uses a similar title, for the purpose of soliciting or procuring a person to enter into a contract or agreement to become the lessee of a motor vehicle or recreational product that is not, and will not be, titled in the name of and registered to the lease facilitator.

(b) Otherwise solicits a person to enter into a contract or agreement to become a lessee of a vehicle that is not, and will not be, titled in the name of and registered to the lease facilitator, or who is otherwise engaged in the business of securing lessees or prospective lessees of motor vehicles or recreational products that are not, and will not be, titled in the name of and registered to the facilitator.

(22) "Licensee" means any person who is required to be licensed by the commission pursuant to the provisions of this Chapter.

(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 C.F.R. 571.500**.

(24) "Manufacturer" means any person, resident or nonresident, who fabricates, manufactures, or assembles motor vehicles, recreational products, or new, remanufactured, reconditioned, or rebuilt motor vehicle or marine motors.

(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 dealer under the provisions of this Chapter.

(26) "Marine motor" 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.

(27) "Marine product" means a new or used watercraft, boat, or motor designed for recreational or commercial use on water and a boat or watercraft trailer. The term also includes an outboard motor or a boat with an inboard/outboard motor attached to it. The term shall not mean a watercraft designed for use primarily for commercial purposes or new or used watercraft or boats adapted to be powered only by occupant's energy.

(28) "Marine product line" means a particular model of a marine product designed for recreational or commercial use on water.

(29) "Marine product salesman" means any natural person employed by a licensee of the commission whose duties include the selling, leasing, or offering for sale or lease, financing or insuring marine products on behalf of said licensee and who holds a motor vehicle salesman license under the provisions of this Chapter.

(30) "Motorcycle" means a motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor and electric-powered scooters not required to be registered.

(31) "Motorcycle or all-terrain vehicle 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 motorcycles or all-terrain vehicles and who is engaged wholly or in part in the business of buying and selling motorcycles or all-terrain vehicles in the state of Louisiana and who holds a license as a recreational products dealer under the provisions of this Chapter.

(a) The term shall also include anyone not licensed under **this** Chapter, who sells motorcycles or all-terrain vehicles and who rents on a daily basis motorcycles or all-terrain vehicles, not of the current year or immediate prior year models, that have been titled previously to an ultimate purchaser.

(b) "Motorcycle or all-terrain vehicle dealer" shall not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

(ii) Public officers while performing their official duties.

(iii) Employees of motorcycle or all-terrain vehicle dealers when engaged in the specific performance of their duties as such employees.

(iv) Mortgagees or secured parties as to sales of motorcycles or all-terrain vehicles constituting collateral on a mortgage or security agreement.

(v) Insurance companies.

(vi) Auctioneers or auction houses who are not engaged in the auction of motorcycles or all-terrain vehicles as the principal part of their business, including but not limited to the following auctions: estate auctions, bankruptcy auctions, farm equipment auctions, or government auctions.

(32) "Motorcycle or all-terrain vehicle salesman" means any natural person employed by a licensee of the commission whose duties include the selling, leasing, or offering for sale or lease, financing or insuring motorcycle or all-terrain vehicles on behalf of said licensee and who holds a motor vehicle salesman license

under the provisions of this Chapter.

(33) "Motor home" means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four of the following permanently installed systems which meet American National Standards Institute and National Fire Protection Association standards in effect as of the date of manufacture, two of which shall be systems specified below in Subparagraph (a), (d), or (e) of this Paragraph:

(a) Cooking facilities.

(b) Ice box or mechanical refrigerator.

(c) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.

(d) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

(e) Heating or air conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.

(f) A one hundred ten/one hundred fifteen volt alternating current electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

(34) "Motor vehicle" means any motor driven car, van, or truck required to be registered which is used, or is designed to be used, for the transporting of passengers or goods for public, private, commercial, or for hire purposes.

(35)(a) "Motor vehicle dealer" means any person, not excluded by Subparagraph (b) of this Paragraph who holds a bona fide franchise in effect with a manufacturer or distributor of new motor vehicles, and a license under the provisions of this Chapter or a subsidiary of any such entity. Such duly franchised and licensed motor vehicle dealers shall be the sole and only persons entitled to sell, publicly solicit, and advertise the sale of new motor vehicles as such.

(b) The term "motor vehicle dealer" does not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment or order of any court.

(ii) Public officers while performing or in operation of their duties.

(iii) Employees of persons enumerated in Item (I) of this Subparagraph when engaged in the specific performance of their duties ad such employees.

(iv) Financial institutions engaged in the sale of motor vehicles for the collection of debts secured thereby.

(35)(a) "Motor vehicle lessor" shall mean any person, not excluded by Subparagraph (b) of this Paragraph, engaged in the motor vehicle, recreational products, or specialty vehicle leasing or rental business. It shall also include a subsidiary of any such entity.

(b) The term "motor vehicle lessor" does not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment or order of any court.

(ii) Public officers while performing or in the operation of their duties.

(iii) Employees of persons, corporations, or associations enumerated in Item (I) of this Subparagraph when engaged in the specific performance of their duties as such employees.

(iv) Financial institutions engaged in the leasing of motor vehicles, recreational products, or specialty vehicles.

(c) Any motor vehicle lessor who rents on a daily basis motor vehicles, recreational products, or specialty vehicles not of the current year or immediate prior year models that have been titled previously to an ultimate purchaser, and who is otherwise not required to obtain a license under this Chapter, shall be subject to the regulation of the Louisiana Used Motor Vehicle Commission.

(37) "Motor vehicle lessor agent" means any natural person, other than a daily rental person, employed by a motor vehicle lessor licensed by the commission whose duties include the leasing, renting or offering for lease or rent motor vehicles, recreational products, or specialty vehicles on behalf of said motor vehicle lessor.

(38) "Motor vehicle lessor franchisor" means any person who grants a franchise to any person granting the right to lease or rent a motor vehicle, recreational product, or specialty vehicle under its trade name, trademark, or service mark or to sell used motor vehicles, recreational products, or specialty vehicles formerly a part of its rental fleet.

(39) "Motor vehicle salesman" means any natural person employed by a licensee of the commission whose duties include the selling, leasing, or offering for sale or lease, financing or insuring motor vehicles, recreational products, or specialty vehicles on behalf of said licensee.

(40) "New marine product" means a marine product, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(41) "New motorcycle or all-terrain vehicle" means a motorcycle or all-terrain vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(42) "New motor vehicle", "new recreational product", or "new specialty vehicle" means a motor vehicle, recreational product, or specialty vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(43) "New recreational vehicle" means a recreational vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(44) "Person" shall mean any natural or juridical person, firm, association, corporation, trust, partnership, limited liability partnership, professional liability corporation, or limited liability company or any other legal entity.

(45) "Recreational products" means new and unused motorcycles, all-terrain vehicles, marine products, recreational vehicles, and trailers as defined in this Chapter.

(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.

(a) The term shall also include anyone not licensed under **this** Chapter, who sells recreational products and who rents on a daily basis recreational products, not of the current year or immediate prior year models, that have been titled previously to an ultimate purchaser.

(b) "Recreational products dealer" shall not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by

or acting under the judgment or order of any court.

(ii) Public officers while performing their official duties.

(iii) Employees of recreational products dealers when engaged in the specific performance of their duties as such employees.

(iv) Mortgagees or secured parties as to sales of recreational products constituting collateral on a mortgage or security agreement.

(v) Insurance companies.

(vi) Auctioneers or auction houses who are not engaged in the auction of recreational products as the principal part of their business, including but not limited to the following auctions: estate auctions, bankruptcy auctions, farm equipment auctions, or government auctions.

(47) "Recreational vehicle" means a motorized or towable vehicle that combines transportation and temporary living quarters for travel, recreation, and camping. For purposes of this Chapter, a "recreational vehicle" includes new and used motor homes, new and used travel trailers, new and used fifth-wheel travel trailers, new and used folding camper trailers, and slide-in truck campers.

(48) "Recreational vehicle 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 vehicles and who is engaged wholly or in part in the business of buying and selling recreational vehicles in the state of Louisiana and who holds a license as a recreational products dealer under the provisions of this Chapter.

(a) The term shall also include anyone not licensed under **this** Chapter, who sells recreational vehicles and who rents on a daily basis recreational vehicles, not of the current year or immediate prior year models, that have been titled previously to an ultimate purchaser.

(b) "Recreational vehicle dealer" shall not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

(ii) Public officers while performing their official duties.

(iii) Employees of recreational vehicle dealers when engaged in the specific performance of their duties as such employees.

(iv) Mortgagees or secured parties as to sales of recreational vehicles constituting collateral on a mortgage or security agreement.

(v) Insurance companies.

(vi) Auctioneers or auction houses who are not engaged in the auction of recreational vehicles as the principal part of their business, including but not limited to the following auctions: estate auctions, bankruptcy auctions, farm equipment auctions, or government auctions.

(49) "Recreational vehicle salesman" means any natural person employed by a licensee of the commission whose duties include the selling, leasing, or offering for sale or lease, financing or insuring recreational vehicles on behalf of said licensee and who holds a motor vehicle salesman license under the provisions of this Chapter.

(50) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle, recreational product, or specialty vehicle to an ultimate purchaser for use as a consumer.

(51) "Satellite warranty and repair center" means a motor vehicle repair facility, other than at a motor vehicle dealer franchised location, approved by a manufacturer or distributor and authorized to perform warranty and other repairs on motor vehicles.

(52) "Selling agreement" means any written contract or agreement between a marine dealer and a manufacturer, or its distributor or factory branch, by which the marine dealer is authorized to engage in the business of selling or leasing the specific makes, models, or classifications of marine products marketed or leased by the manufacturer, and designated in the selling agreement or any addendum thereto. For the purposes of this Paragraph, any written modification, amendment, or addendum to the original selling agreement that changes the rights and obligations of the parties to the original selling agreement shall constitute a new selling agreement, effective as of the date of the modification, amendment, or addendum.

(53) "Specialty vehicle" means a motor vehicle manufactured by a second stage manufacturer by purchasing motor vehicle components, including frames and drive trains, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public. Specialty vehicle includes ambulances, fire trucks, garbage trucks, hearses, limousines, school buses, street sweepers, vacuum trucks, wreckers, and other similar limited purpose vehicles. Specialty vehicle does not include motor homes as defined in this **Section**.

(54) "Specialty vehicle dealer" means any person who holds a bona fide franchise in effect with a converter or second stage manufacturer of specialty vehicles and a license under the provisions of this Chapter or a subsidiary of any such entity. Such duly franchised and licensed specialty vehicle dealer shall be the sole person entitled to sell, publicly solicit, and advertise the sale of specialty vehicles.

(55) "Subsidiary " shall mean any person engaged in the selling or leasing of motor vehicles, recreational products, or specialty vehicles, in which a majority of the ownership interests of such entity is owned by a holder of a license issued by the commission.

(56) "Trailer" means every single vehicle without motive power designed for carrying property or passengers wholly on its own structure, drawn by a motor vehicle which carries no part of the weight and load of the trailer on its own wheels and having one or more load carrying axles. "Trailer" includes but is not limited to utility trailers, boat trailers, recreational trailers, semitrailers, livestock trailers, **tow dollies,** and dump trailers.

(57) "Ultimate purchaser" means, with respect to any new motor vehicle, recreational product, or specialty vehicle, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new motor vehicles, recreational products, or specialty vehicles for purposes other than resale. "Ultimate purchaser" shall not include a person who purchases a motor vehicle or recreational product for purposes of altering or remanufacturing the motor vehicle or recreational product for future resale.

(58)(a) "Used marine dealer" means any person, whose business is to sell, or offer for sale, display, or advertise used marine products, or any person who holds a license from the commission and is not excluded by Subparagraph (b) of this Paragraph.

(b) "Used marine dealer" shall not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

(ii) Public officers while performing their official duties.

(iii) Employees of persons, corporations, or associations defined as "used marine dealer" when engaged in the specific performance of their duties of such employees.

(iv) Mortgagees or secured parties as to sales of marine products constituting collateral on a mortgage or security agreement and who do not maintain a used car lot or building with one or more

employed marine product salesman.

(v) Insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed marine product salesman.

(vi) Used motor vehicle dealers licensed pursuant to R.S. 32:781 et seq.

(59) "Used marine product" means a marine product, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(60) "Used marine product facility" means any facility which is owned and operated by a licensee of the commission and offers for sale used marine products.

(61) "Used motorcycle or all-terrain vehicle" means a motorcycle or all-terrain vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(62)(a) "Used motorcycle or all-terrain vehicle dealer" means any person, whose business is to sell, or offer for sale, display, or advertise used motorcycles or all-terrain vehicles, or any person who holds a license from the commission and is not excluded by Subparagraph (b) of this Paragraph.

(b) "Used motorcycle or all-terrain vehicle dealer" shall not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

(ii) Public officers while performing their official duties.

(iii) Employees of persons, corporations, or associations enumerated in the definition of "used motorcycle or all-terrain vehicle dealer" when engaged in the specific performance of their duties as such employees.

(iv) Mortgagees or secured parties as to sales of motorcycles or all-terrain vehicles constituting collateral on a mortgage or security agreement and who do not maintain a used car lot or building with one or more employed motorcycle or all-terrain vehicle salesman.

(v) Insurance companies who sell motorcycles or all-terrain vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motorcycle or all-terrain vehicle salesman.

(vi) Used motorcycle or all-terrain vehicle dealers licensed pursuant to R.S. 32:781 et seq.

(63) "Used motorcycle or all-terrain vehicle facility" means any facility which is owned and operated by a licensee of the commission and offers for sale used motorcycles or all-terrain vehicles.

(64) "Used motor vehicle" means a motor vehicle, recreational product, or specialty vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(65)(a) "Used motor vehicle dealer" means any person, whose business is to sell, or offer for sale, display, or advertise used motor vehicles, recreational products, or specialty vehicles, or any person who holds a license from the commission and is not excluded by Subparagraph (b) of this Paragraph.

(b) "Used motor vehicle dealer" shall not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

(ii) Public officers while performing their official duties.

(iii) Employees of persons, corporations, or associations enumerated in the definition of "used motor vehicle dealer" when engaged in the specific performance of their duties as such employees.

(iv) Mortgagees or secured parties as to sales of motor vehicles constituting collateral on a mortgage or security agreement and who do not maintain a used car lot or building with one or more employed motor vehicle salesman.

(v) Insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesman.

(vi) Used motor vehicle dealers licensed pursuant to R.S. 32:781 et seq.

(66) "Used motor vehicle facility" means any facility which is owned and operated by a licensee of the commission and offers for sale used motor vehicles, recreational products, or specialty vehicles.

(67) "Used recreational vehicle" means a recreational vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(68)(a) "Used recreational vehicle dealer" means any person, whose business is to sell, or offer for sale, display, or advertise used recreational vehicles, or any person who holds a license from the commission and is not excluded by Subparagraph (b) of this Paragraph.

(b) "Used recreational vehicle dealer" shall not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

(ii) Public officers while performing their official duties.

(iii) Employees of persons, corporations, or associations enumerated in the definition of "used recreational vehicle dealer" when engaged in the specific performance of their duties as such employees.

(iv) Mortgagees or secured parties as to sales of recreational vehicles constituting collateral on a mortgage or security agreement and who do not maintain a used car lot or building with one or more employed recreational vehicle salesman.

(v) Insurance companies who sell recreational vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed recreational vehicle salesman.

(vi) Used recreational vehicle dealers licensed pursuant to R.S. 32:781 et seq.

(69) "Used recreational vehicle facility" means any facility which is owned and operated by a licensee of the commission and offers for sale used recreational vehicles.

(70) “Vehicle” means any motor vehicle, specialty vehicle, or recreational product subject to regulation by this Chapter.

(71) "Wrecker" means any motor vehicle equipped with a boom or booms, winches, slings, tilt beds, or similar equipment designed for towing or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

Acts 1985, No. 911, §1; Acts 1986, No. 552, §1; Acts 1987, No. 775, §1; Acts 1989, No. 262, §1; Acts 1989, No. 634, §1; Acts 1990, No. 283, §1, eff. July 5, 1990; Acts 1991, No. 937, §1; Acts 1995, No. 51, §1, eff. June

9, 1995; Acts 1999, No. 1100, §§1, 2; Acts 2001, No. 1054, §1; Acts 2001, No. 1067, §1; Acts 2004, No. 250, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2006, No. 352, §1; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2011, 1st Ex. Sess., No. 9, §1; Acts 2012, No. 326, §1, eff. August 1, 2012, **Acts 2013, No. 158, §1, eff. June 7, 2013, Acts 2013, No. 53, §1, eff. August 1, 2013, Acts 2013, No. 61, §1, eff. August 1, 2013.**

§1253. Motor Vehicle Commission; appointment and qualifications of members; terms of office; organization; oath; official bond; compensation; powers and duties

A. The Louisiana Motor Vehicle Commission is hereby created within the office of the governor and shall be composed of eighteen members appointed by the governor, as follows:

(1) A chairman of the commission shall be appointed from the state at large. Fourteen members shall be appointed in such manner that at least one, but no more than two, shall be from each of the commission districts as listed below:

(a) Commission District 1 shall consist of the following parishes: Orleans, Plaquemines, St. Bernard, St. Tammany, and Washington.

(b) Commission District 2 shall consist of the following parishes: Jefferson, St. Charles, St. John, St. James, and Tangipahoa.

(c) Commission District 3 shall consist of the following parishes: East Baton Rouge, West Baton Rouge, Iberville, Ascension, East Feliciana, West Feliciana, St. Helena, Livingston, Assumption, and Point Coupee.

(d) Commission District 4 shall consist of the following parishes: Richland, Franklin, Union, Lincoln, Jackson, Winn, Caldwell, Ouachita, Morehouse, West Carroll, East Carroll, and Madison.

(e) Commission District 5 shall consist of the following parishes: Caddo, Bossier, Webster, DeSoto, Red River, Bienville, Claiborne, and Sabine.

(f) Commission District 6 shall consist of the following parishes: Rapides, Grant, LaSalle, Catahoula, Concordia, Avoyelles, Vernon, Tensas, and Natchitoches.

(g) Commission District 7 shall consist of the following parishes: Beauregard, Allen, Calcasieu, Cameron, Jefferson Davis, Acadia, and Evangeline.

(h) Commission District 8 shall consist of the following parishes: Lafayette, St. Landry, St. Martin, St. Mary, Iberia, Terrebonne, Lafourche, and Vermilion.

(2) Each of the commissioners appointed under the provisions of Paragraph (1) of this Subsection shall have been an actively engaged licensee of the commission or its previous Louisiana licensing commission for not less than five consecutive years prior to such appointment, and be a holder of such a license at all times while a member of the commission. Being engaged in more than one such pursuit shall not disqualify a person otherwise qualified from serving on the commission. Of these members, one member shall be primarily engaged in the business of lease or rental, one member shall be primarily engaged in the business of heavy truck sales, one member shall be primarily engaged in the business of marine product sales, one member shall be primarily engaged in the business of motorcycle sales, one member shall be primarily engaged in the business of recreational vehicle sales, and one member shall be primarily engaged in the business of sales finance.

(3) (a) Each of the three remaining appointive members shall be a public member who is not a licensee under this Chapter and shall be appointed from the state at large. These three commissioners shall have the sole function of hearing and deciding matters concerning brokers and disputes between manufacturers, distributors, converters, motor vehicle lessor franchisors, or representatives and motor vehicle dealers, recreational products dealers, specialty vehicle dealers, and motor vehicle lessors.

(b) This function shall be performed only when so requested in writing at the time of the filing of the initial protest or initial answer to the protest. If no party requests a hearing before these commissioners, the commissioners appointed pursuant to Paragraph (1) of this Subsection shall retain jurisdiction over the dispute. Should a consumer, broker, manufacturer, distributor, converter, motor vehicle lessor franchisor, representative, motor vehicle lessor, specialty vehicle dealer, recreational product dealer, or motor vehicle dealer make the request as set forth above, the commissioners appointed pursuant to Paragraph (1) of this Subsection shall not participate, deliberate, or in any way take part in the hearing.

(c) The three commissioners shall elect among themselves a chairman to serve as presiding officer of the hearing.

(4) Each appointment to the commission by the governor shall be submitted to the Senate for confirmation. Each commissioner shall at the time of appointment be a resident of this state and shall be of good moral character.

B. (1) The members shall serve at the pleasure of the governor. In the event of the death, resignation, or removal of any person serving on the commission, the vacancy shall be filled in the manner of the original appointment.

(2) The commission shall meet in Jefferson Parish and complete its organization immediately after the entire membership thereof has been appointed and has qualified.

(3) The chairman and each member of the commission shall take and subscribe to the oath of office required of public officers.

C. The chairman and members of said commission shall receive fifty dollars per diem for each and every day necessarily spent in conducting the business of the commission, and shall be reimbursed for actual expenses incurred in the performance of their duties under this Chapter.

D. The commission shall appoint a qualified person to serve as executive director thereof, to serve at the pleasure of the commission and shall fix his salary and shall define and prescribe his duties. The executive director shall be in charge of the commission's office and shall devote such time to the duties thereof, as may be necessary. Said commission may employ such clerical and professional help and incur such expenses as may be necessary for the proper discharge of its duties under this Chapter. The commission shall maintain its office and transact its business in Jefferson Parish, and it is authorized to adopt and use a seal.

E. The commission is hereby vested with the powers and duties necessary and proper to enable it to fully and effectively carry out the provisions and objects of this Chapter, and is hereby authorized and empowered to make and enforce all reasonable rules and regulations and to adopt and prescribe all forms necessary to accomplish said purpose, and the enumeration of any power or authority herein shall not be construed to deny, impair, disparage, or limit any others necessary to the attainment thereof. A copy of all rules and regulations adopted by the commission shall be published in the Louisiana Administrative Code, as they may be amended, modified, or repealed from time to time.

F. All fees and charges under the provisions of this Chapter shall be collected and received by the executive director of the commission and shall be disbursed by him at the direction of the commission in administering and enforcing the provisions of this Chapter.

G. All expenses incurred by the commission in carrying out the provisions of this Chapter, including but not limited to per diem, wages, salaries, rent, postage, supplies, bond premiums, travel and subsistence, and printing and utilities, shall be a proper charge against said fund.

H. The commission shall, in addition to the powers herein conferred, be constituted a body politic or political corporation, invested with the powers inherent in corporations, including but not limited to the power and authority to own immovable property. It may sue and be sued under the style of the commission, and all process against the commission shall be served on the chairman or executive director in person, and all suits on behalf of the commission shall be brought by the chairman. The domicile for the purpose of being sued

shall be Jefferson Parish. No member of the commission, or the executive director, shall be subject to suit or be held liable as an individual in any suit against the commission.

Acts 1985, No. 911, §1; Acts 1986, No. 812, §1, eff. March 14, 1988; Acts 1987, No. 710, §2; Acts 1987, No. 775, §1; Acts 1989, No. 262, §1; Acts 1990, No. 124, §1; Acts 1991, No. 296, §1, eff. July 2, 1991; Acts 1995, No. 51, §1, eff. June 9, 1995; Acts 1997, No. 211, §1; Acts 1999, No. 1100, §1; Acts 2000, 1st Ex. Sess., No. 46, §1; Acts 2001, No. 8, §9, eff. July 1, 2001; Acts 2004, No. 550, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2012, No. 855, §1, eff. July 1, 2012.

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

A. The following persons shall be licensed by the commission in order to engage in business in the state of Louisiana, regardless of whether or not said person maintains or has a place or places of business in this state, and it is a violation of this Chapter to operate without first obtaining a license:

(1) Manufacturers.

(2) Motor vehicle dealers.

(3) Factory branches.

(4) Distributors or wholesalers.

(5) Distributor branches.

(6) Used motor vehicle facilities operated by new motor vehicles dealers, motor vehicle lessors, specialty vehicles dealers, or recreational products dealers.

(7) Satellite warranty and repair centers.

(8) Brokers.

(9) Motor vehicle lessor franchisors.

(10) Motor vehicle lessors.

(11) Motor vehicle lease facilitators.

(12) Converters or secondary manufacturers.

(13) Specialty vehicle dealers.

(14) Factory representatives.

(15) Distributor representatives.

(16) Motor vehicle salesmen.

(17) Motor vehicle lessor agents.

(18) Recreational products dealers.

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

B. (1) (a) All applications for license or licenses shall be accompanied by the appropriate fee or fees in accordance with the schedule set out in R.S. 32:1255. All such fees shall be nonrefundable. Except as provided in Subparagraph (b) of this Paragraph and Paragraph (2) of this Subsection, all licenses issued under

the provisions of this Chapter in accordance with the geographical location of the licensee will be for the year beginning and ending as follows:

1st Commission District--April 1 through March 31.

2nd Commission District--May 1 through April 30.

3rd Commission District--June 1 through May 31.

4th Commission District--July 1 through June 30.

5th Commission District--August 1 through July 31.

6th Commission District--September 1 through August 31.

7th Commission District--October 1 through September 30.

8th Commission District--November 1 through October 31.

(b) Commencing January 1, 2011, licenses shall be issued for a term of two years initially staggering the two-year license so Commission Districts 1,3, 5, and 7 will be issued a one-year license in 2011 and a two-year license thereafter. Recreational product license fees shall be prorated to cover the period from December 31, 2010, until license renewal.

(2) The license of any recreational products dealer shall expire December 31, 2010, and the license of any licensee who does not maintain a place of business in this state shall expire on December thirty-first of each year.

C. General licensing and compliance requirements for all license applicants and holders:

(1) All applications for licenses required to be obtained under provisions of this Chapter shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the commission and furnished to such applicants, and shall contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for.

(2) The commission shall require, in such application or otherwise, information relating to the applicant's business integrity, whether the applicant is primarily engaged in the pursuit, avocation, or business for which a license or licenses is applied, the particular qualifications and requirements pertaining to the license or licenses sought, and whether the applicant is able to properly conduct the business for which a license or licenses is applied, and such other pertinent information consistent with the safeguarding of the public interest and public welfare.

(3) In the performance of its duties under this Section, the commission shall have the authority to obtain from the Department of Public Safety and Corrections and other governmental agencies information relating to the criminal records of applicants for licenses under this Chapter. The information in such records shall be kept confidential by the commission.

(4) All licensees must operate from an established place of business properly zoned in the municipality in which the licensee operates.

(5) All licenses and renewals are issued subject to all provisions of this Chapter and rules of the commission in effect upon date of issuance, as well as any subsequent amendments to, enactments of, or repeals of any provisions in this Chapter and rules which may become effective during the term of the license.

(6) Any person serving in more than one capacity or having more than one place where such business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

(7) The license issued to any licensee shall specify the location of the licensee's established place of business.

(8) In determining whether or not to issue a license to any applicant, the commission shall consider the information provided above, the declaration of public policy set forth in R.S. 32:1251, as well as all of the following:

(a) Business integrity of the applicant.

(b) Ability of the applicant to conduct properly the business for which the license is sought.

(c) Effect on the business for which the license is sought and the effect on the consuming public in the community or territory and the state of Louisiana.

(9) All applications for license pursuant to this Chapter shall include evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain insurance coverage or until proof of the required insurance is furnished to the commission. If no proof is furnished to the commission within thirty days, the license of such licensee shall be revoked.

(10) All foreign persons seeking or maintaining a license under this Chapter must be registered to do business in this state with the secretary of state. Evidence showing such registration shall be furnished by such applicant or licensee.

(11) No license issued under this Chapter shall be transferable.

(12) At least sixty days prior to the receipt by the commission of an application by a licensee for the establishment of new location required to be licensed under the provisions of this Chapter, for a change of location, change in corporate ownership or majority ownership, change in the name of licensee, change in the makes, models, or classifications of vehicles designated in the franchise or any addendum thereto and manufactured, distributed, or sold, the addition of makes, models, or classifications of vehicles designated in the franchise or any addendum thereto and manufactured, converted, distributed, or sold, or a change in the identity of the designated dealer-operator of a licensee the commission must receive a written notice from the person seeking to effect such change. This sixty-day notice shall provide such information as the commission in its discretion may require. The sixty-day notice may be waived by the commission, when, in its discretion, the commission feels that such waiver would be in the best interest of the public welfare.

D. Additional licensing and compliance requirements for manufacturers, distributors, wholesalers, converters or secondary manufacturers, distributors or wholesalers, factory branches and distributor branches:

(1) The commission shall require, in all manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch and distributor branch applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All manufacturers, converters or secondary manufacturers, distributors or wholesalers, factory branches and distributor branches must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All manufacturers, converters or secondary manufacturers, distributors or wholesalers, factory branches and distributor branches must have a usable telephone at the place of business, the number of which should be listed on the application for license, and also listed in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4) (a) The license issued to each manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch or distributor branch shall specify the location of the office or factory, or branch

thereof, and the makes, models, or classifications of motor vehicles, recreational products, or specialty vehicles to be manufactured, distributed, or converted. The license issued to any manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch or distributor branch shall specify the location of such manufacturer's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a licensee, or a change by a licensee in the makes, models, or classifications, requiring an addendum to a franchise agreement, of motor vehicles, recreational products, or specialty vehicles manufactured, distributed, or converted, or the addition of a make of motor vehicle or recreational product manufactured, distributed, or converted shall require a new license and application therefor.

(5) In determining whether or not to issue a license to a manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch and distributor branch, the commission shall also consider the financial standing of the applicant and the adequacy of the applicant's established place of business for the purpose for which a license is sought.

(6) Repealed

(7) Upon execution of a franchise, or addendum thereto, with a motor vehicle dealer, recreational products dealer, or specialty vehicle dealer, the manufacturer, distributor, wholesaler, or a convertor or secondary manufacturer shall immediately file with the commission a copy of the franchise or addendum.

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

(1) The commission shall also require, in all motor vehicle and recreational products dealer applications or otherwise, information relating to the applicant's financial standing and established place of business.

(2) All motor vehicle and recreational products dealers must provide a suitable office and have a permanently affixed sign in front of the establishment of offices which denotes that vehicles are offered for sale, lease or rent at the location to which the sign is affixed.

(3) All motor vehicle and recreational products dealers must have a usable telephone at the place of business, the number of which should be listed on the application for license and in a local directory accessible to the public. The commission must be notified of any change in the telephone number.

(4) (a) Applications for license as motor vehicle and recreational products dealer must, in addition to the foregoing, also be accompanied by the filing with the commission of a bona fide contract or franchise in effect between the applicant and a manufacturer or distributor of the new motor vehicle or vehicles or recreational product or products proposed to be dealt in for a specific location in the state of Louisiana.

(b) However, if such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise, identify same by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise.

(5) The applicant must also furnish satisfactory evidence that the applicant maintains adequate space in the building or structure wherein the applicant's established business is conducted for the display of new motor vehicles or recreational products, together with adequate facilities for the repair and servicing of motor vehicles or recreational products and the storage of new parts and accessories for same.

(6) The application shall also identify the individual named as dealer-operator, and shall contain such information as the commission deems necessary to enable it to fully determine his qualifications and eligibility to serve in that capacity.

(7) All motor vehicle or recreational products dealer applications for license pursuant to this Chapter shall include evidence the applicant has insurance covering its place of business and its operation

that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance shall be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. Should no proof of insurance be furnished to the commission within thirty days, the license of such licensee shall be revoked.

(8) In determining whether or not to issue a license to a motor vehicle or recreational products dealer, the commission shall also consider the financial standing of the motor vehicle or recreational products dealer, the adequacy of the motor vehicle or recreational products dealer's established place of business for the purpose for which a license is sought, and the effect on the motor vehicle or recreational products sale or leasing/rental business and the consuming public in the state of Louisiana.

(9) (a) The license issued to each motor vehicle or recreational products dealer shall specify the location of the office and the makes, models, or classifications of motor vehicles or recreational products to be sold, and the name of the dealer-operator. The license issued to a motor vehicle dealer shall specify the licensee’s established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a licensee, or a change by a licensee in the makes, models, or classifications, requiring an addendum to a franchise agreement, of motor vehicles or recreational products sold, or the addition of a make of motor vehicles or recreational products sold or a change in the designation of the dealer-operator shall require a new license and application therefor.

(c) Notwithstanding the provisions of Subparagraph (b) of this Paragraph, a licensed motor vehicle or recreational products dealer shall not be required to submit an application for and obtain a new license if ownership interests in the dealership changes among existing family member owners, as long as the identity of the majority owner does not change, no additional persons are added as owners, and all changes in ownership interest are declared in the renewal application. For the purposes of this Subparagraph, "family member owners" shall include the majority owner's children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, parents, his spouse, the parents of his spouse, and his grandchildren.

(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.

(10)(a) Before any motor vehicle or recreational products dealer license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars,, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

(11) Upon execution of a franchise, or addendum thereto, the motor vehicle or recreational product dealer shall immediately file with the commission a copy of the franchise or addendum.

F. Additional licensing and compliance requirements for used motor vehicle facilities operated by new motor vehicle dealers, motor vehicle lessors and specialty vehicle dealers:

(1) The commission shall also require, in all used motor vehicle facility applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All used motor vehicle facilities licensed by the commission must provide a suitable office and have a permanently affixed sign in front of the establishment, which denotes that vehicles are offered for sale at the location to which the sign is affixed.

(3) All used motor vehicle facilities licensed by the commission must have a useable telephone at the place of business, the number of which should be listed on the application for license and in a local directory accessible to the public. The commission must be notified of any change in the telephone number.

(4) All used motor vehicle facilities licensed by the commission shall furnish, in their application for license pursuant to this Chapter, evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance shall be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. Should no proof of insurance be furnished to the commission within thirty days, the license of such licensee shall be revoked.

(5) In determining whether or not to issue a license to a used motor vehicle facility licensed by the commission, the commission shall also consider the financial standing of the used motor vehicle facility and the adequacy of the used motor vehicle facility's established place of business for the purpose for which a license is sought, the effect on the used motor vehicle sales business and the consuming public in the state of Louisiana.

(6) (a) The license issued to any used motor vehicle facility licensed by the commission shall specify the location of such licensee's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a used motor vehicle facility licensed by the commission shall require a new license and application therefor.

(7) Applicants for and holders of used motor vehicle dealer licenses shall obtain and maintain bonds in accordance with the following provisions:

(a) Before any used motor vehicle dealer license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of ten thousand dollars, shall be delivered to the commission. If a used motor vehicle dealer operates from more than one location, a bond in the amount of ten thousand dollars shall be required for each location.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no

event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

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

(1) The commission shall require, in all satellite warranty and repair center applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All satellite warranty and repair centers must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All satellite warranty and repair centers must have a usable telephone at the place of business, the number of which should be listed on the application for license and in a local directory accessible to the public. The commission must be notified of any change in the telephone number.

(4) All satellite warranty and repair centers shall 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. Said insurance or liability protection shall be maintained throughout the period of licensure. Failure to maintain such insurance or liability protection shall result in the immediate suspension of license, which suspension shall be effective as of the date of said failure to maintain said liability insurance coverage or liability protection until proof of the required garage liability insurance or liability protection is furnished to the commission. Should no proof of insurance or liability protection provided by a liability trust fund as authorized by R.S. 22:46(9)(d) be furnished to the commission within thirty days, the license of said licensee shall be revoked.

(5) (a) The license issued to any satellite warranty and repair center shall specify the location of such satellite warranty and repair center’s established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a satellite warranty and repair center shall require a new license and application therefor.

(6) In determining whether or not to issue a license to a satellite warranty and repair center, the commission shall also consider the adequacy of the satellite warranty and repair center's established place of business for the purpose for which a license is sought.

(7) Applicants for and holders of satellite warranty and repair center licenses shall obtain and maintain bonds in accordance with the following provisions:

(a) Before any satellite warranty and repair center license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension

of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

H. Additional licensing and compliance requirements for brokers.

(1) The commission shall require, in all broker applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All brokers must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All brokers must have a usable telephone at the place of business, the number of which should be listed on the application for license, and also in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4) (a) The license issued to any broker shall specify the location of such broker's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a broker shall require a new license and application therefor.

(5) In determining whether or not to issue a license to a broker, the commission shall also consider the financial standing of the broker and the adequacy of the broker's established place of business for the purpose for which a license is sought, the effect on the motor vehicle brokerage business and the consuming public in the state of Louisiana.

(6) Applicants for and holders of broker licenses shall obtain and maintain bonds in accordance with the following provisions:

(a) Before any broker license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period; however, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

(7) A person acting as a broker in a transaction involving the sale for purposes other than resale, of a used motor vehicle must be licensed and regulated under the provisions of Chapter 4-B of Title 32 of the Louisiana Revised Statutes of 1950.

I. Additional licensing and compliance requirements for motor vehicle lessor franchisors.

(1) The commission shall require, in all motor vehicle lessor franchisor applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All motor vehicle lessor franchisors must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All motor vehicle lessor franchisors must have a usable telephone at the place of business, the number of which should be listed on the application for license, and listed in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4) (a) The license issued to any motor vehicle lessor franchisor shall specify the location of such motor vehicle lessor franchisor's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a motor vehicle lessor franchisor shall require a new license and application therefor.

(5) In determining whether or not to issue a license to a motor vehicle lessor franchisor, the commission shall also consider the financial standing of the motor vehicle lessor franchisor and the adequacy of the motor vehicle lessor franchisor's established place of business for the purpose for which a license is sought.

(6) Upon execution of a franchise, or addendum thereto, with a motor vehicle lessor, the motor vehicle lessor franchisor shall immediately file with the commission a copy of the franchise or addendum.

J. Additional licensing and compliance requirements for motor vehicle lessors:

(1) The commission shall also require, in all motor vehicle lessor applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All motor vehicle lessors must provide a suitable office and have a permanently affixed sign in front of the establishment of offices which denotes that vehicles are offered for lease or rent at the location to which the sign is affixed.

(3) All motor vehicle lessors must have a usable telephone at the place of business, the number of which should be listed on the application for license, and listed in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4) (a) Applications for license as motor vehicle lessor must, in addition to the foregoing, also be accompanied by the filing with the commission of any bona fide contract or franchise in effect between the applicant and a motor vehicle lessor franchisor of the new motor vehicle or vehicles proposed to be dealt in for a specific location in the state of Louisiana.

(b) However, if such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise, identify same by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise.

(5) All motor vehicle lessors, in their application for license pursuant to this Chapter, shall include evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance must be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. Should no proof of insurance be furnished to the commission within thirty days, the license of such licensee shall be revoked.

(6) (a) The license issued to a motor vehicle lessor shall specify the licensee's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a motor vehicle lessor shall require a new license and application therefor.

(7) In determining whether or not to issue a license to a motor vehicle lessor, the commission shall also consider the financial standing of the motor vehicle lessor, the adequacy of the motor vehicle lessor's established place of business for the purpose for which a license is sought, and the effect on the motor vehicle leasing/rental business and the consuming public in the state of Louisiana.

K. Additional licensing and compliance requirements for motor vehicle lease facilitators.

(1) The commission shall also require, in all motor vehicle lease facilitator applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All motor vehicle lease facilitators must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All motor vehicle lease facilitators must have a useable telephone at the place of business, the number of which should be listed on the application for license, and also in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4) In determining whether or not to issue a license to a motor vehicle lease facilitator, the commission shall also consider the financial standing of the motor vehicle lease facilitator and the adequacy of the motor vehicle lease facilitator's established place of business for the purpose for which a license is sought.

(5) (a) The motor vehicle lease facilitators shall specify the location of such motor vehicle lease facilitator's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a motor vehicle lease facilitator, shall require a new license and application therefor.

L. Additional licensing and compliance requirements for specialty vehicle dealers:

(1) The commission shall also require, in all specialty vehicle dealer applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All specialty vehicle dealers must provide a suitable office and have a permanently affixed sign in front of the establishment of offices which denotes that vehicles are offered for sale at the location to which the sign is affixed.

(3) All specialty vehicle dealers must have a usable telephone at the place of business, the number of which should be listed on the application for license, and also in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4) (a) Applications for license as a specialty vehicle dealer must, in addition to the foregoing, also be accompanied by the filing with the commission of a bona fide contract or franchise in effect between the applicant and a converter or secondary manufacturer of the specialty vehicle or vehicles proposed to be dealt in for a specific location.

(b) However, if such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise, identify same by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise.

(5) All specialty vehicle dealers, in their application for license pursuant to this Chapter, shall include evidence the applicant has insurance covering its place of business and its operation that complies

with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance must be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. If no proof of insurance is furnished to the commission within thirty days, the license of such licensee shall be revoked.

(6) (a) The license issued to each specialty vehicle dealer shall specify the location of the office and the makes, models, or classifications of specialty vehicles to be sold. The license issued to a specialty vehicle dealer shall specify the licensee's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a licensee, or a change by a licensee in the makes, models or classifications, requiring an addendum to a franchise agreement of specialty vehicles sold, or the addition of a make of motor vehicle sold shall require a new license and application therefor.

(7) In determining whether or not to issue a license to a specialty vehicle dealer, the commission shall also consider the financial standing of the specialty vehicle dealer and the adequacy of the specialty vehicle dealer's established place of business for the purpose for which a license is sought.

(8) Applicants for and holders of specialty vehicle dealer licenses shall obtain and maintain bonds in accordance with the following provisions:

(a) Before any specialty vehicle dealer license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

M. Additional licensing and compliance requirements for motor vehicle salesmen, motor vehicle lessor agents, factory representatives, and distributor representatives.

(1) Every motor vehicle salesman, factory representative, distributor representative, and motor vehicle lessor agent shall have his license upon his person when engaged in his business and shall display same upon request. The name of said licensee's employer shall be stated in said license.

(2) In determining whether or not to issue a license to any motor vehicle salesman or motor vehicle lessor agent, the commission shall also consider the effect of such licensure on the motor vehicle leasing/rental business and the consuming public.

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.

Acts 1985, No. 911, §1; Acts 1985, No. 422, §1, eff. July 10, 1985; Acts 1987, No. 450, §1; Acts 1987, No. 775, §§1, 2; Acts 1989, No. 262, §1; Acts 1989, No. 477, §1; Acts 1989, No. 634, §1; Acts 1990, No. 124, §1; Acts 1990, No. 283, §1, eff. July 5, 1990; Acts 1991, No. 296, §1, eff. July 2, 1991; Acts 1992, No. 258, §1, eff. June 10, 1992; Acts 1993, No. 536, §§1, 2; Acts 1995, No. 51, §1, 2, eff. June 9, 1995; Acts 1997, No. 87, §1; Acts 1997, No. 211, §1; Acts 1999, No. 785, §1; Acts 1999, No. 981, §1; Acts 1999, No. 1100, §1; Acts 2001, No. 1054, §1; Acts 2001, No. 1067, §1; Acts 2001, No. 1154, §1; Acts 2003, No. 251, §1; Acts 2003, No. 917, §1; Acts 2004, No. 250, §1; Acts 2004, No. 276, §1; Acts 2004, No. 348, §1; Acts 2004, No. 409, §1; Acts 2004, No. 670, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2006, No. 352, §1; Acts 2007, No. 27, §1, eff. June 18, 2007; Acts 2008, No. 415, §2, eff. Jan. 1, 2009; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2011, No. 89, §1, eff. August 15, 2011, **Acts 2013, No. 61, §, eff. August 1, 2013.**

§1255. Fees; penalties

A. To defray the cost of issuing licenses and administering this Chapter, the commission shall fix reasonable fees to be assessed under this Chapter as follows:

(1) The license for each manufacturer, distributor, converter, motor vehicle lessor franchisor, or wholesaler, and factory branch or distributor branch, shall not exceed one thousand dollars for each year covered by the license.

(2) The license for each motor vehicle dealer, specialty vehicle dealer, recreational products dealer, motor vehicle lessor, used motor vehicle dealer, factory representative, broker, distributor representative, or lease facilitator shall not exceed three hundred dollars for each year covered by the license.

(3) The license fee for each motor vehicle salesman and motor vehicle lessor agent shall not exceed thirty dollars for each year covered by the license.

(4) The fee for auto shows, trade shows, and expositions shall not exceed five hundred dollars.

(5) The fee for satellite warranty and repair centers shall not exceed three hundred dollars for each year covered by the license.

B. Any person, firm, or corporation required to be licensed hereunder, who fails to make application for such license at the time required herein, or required by the rules and regulations of the commission shall, in addition to the aforesaid fees, pay a penalty of fifty percent of the amount of the license fee. The penalty, however, may be waived in whole or in part within the discretion of the commission.

Acts 1985, No. 911, §1; Acts 1995, No. 51, §1, eff. June 9, 1995; Acts 1999, No. 1100, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2010, No. 1036, §1, eff. August 15, 2010.

§1256. Auto shows

The commission may authorize or prohibit motor vehicle sales and shows at off-site locations. The commission may, in its discretion, allow such sales and shows in accordance with the rules and regulations adopted by the commission in accordance with the Administrative Procedure Act.

Acts 1985, No. 911, §1; Acts 1987, No. 775, §1; Acts 1988, No. 247, §1; Acts 1989, No. 262, §1; Acts 1990, No. 519, §1; Acts 1995, No. 51, §1, eff. June 9, 1995; Acts 1995, No. 458, §1; Acts 1995, No. 758, §1, eff. June 27, 1995; Acts 1995, No. 1133, §2; Acts 1997, No. 211, §1; Acts 1999, No. 1100, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2012, No. 855 , §1, eff. July 1, 2012.

§1256.1. Regional recreational products shows

A. (1) Shows where recreational products 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 shall occur at such show except by licensed Louisiana dealers whose areas of responsibility for the brand of recreational products they represent include the location of the show.

(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 show at which recreational products are displayed by dealers, manufacturers, or distributors. 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 that are identified by a common series trade name or trademark and for which the manufacturer 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 products are members of the club and are invited to participate in the event.

(e) “Regional recreational product show” or “show” means a controlled event at which a producer charges or barters for booth space or charges spectator entrance, or both, and where three or more recreational product dealers, distributors, or manufacturers exhibit recreational products. It does not include a rally or a national product show as defined in R.S. 32:1256.2.

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

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

(1) Louisiana recreational products 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 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 dealer shall not show the same brand of recreational product as shown by a participating Louisiana recreational products dealer whose area of responsibility includes the location of the show.

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

(4) Non-Louisiana recreational products dealers, distributors, and manufacturers 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, distributor, and manufacturer 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, distributors, and manufacturers 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, distributor or

manufacturer shall participate in any regional recreational product show where its product line of recreational 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 provision 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.

Acts 2012, No. 855, §1, eff. July 1, 2012.

§1256.2 National recreational product shows

A. National recreational product shows are hereby authorized as provided for in this Section.

B. When used in this Section, the following words and phrases have meanings ascribed to them in this Paragraph:

(1) "National recreational product show" or "show" means a controlled event promoted by an organizer who seeks sponsorships from distributors or manufacturers of recreational product where their products are shown. A national recreational product show requires all of the following:

(a) The participation of at least three or more sponsors.

(b) A duration of no longer than ten days.

(c) A non-selling show with no execution of sales contracts, credit applications, taking of security deposits, or delivery of any recreational product.

(2) "Non-Louisiana" means a distributor or manufacturer who holds a current license as a distributor or manufacturer in another state.

(3) "Organizer" means any person, alone or with others, whose principal business activity is the promotion of shows. An organizer shall be licensed as a promoter pursuant to R.S. 32:1254.

(4) "Product specialist" means any person selected by the sponsor to assist in the sponsor's participation in a show.

(5) "Sponsor" means a distributor or manufacturer who pays cash or an in-kind fee to an organizer in return for access to the commercial potential associated with a show.

C. The presence of product specialists, business cards, brochures, pricing sheets and other points of sales devices to answer consumer questions are not prohibited at a national recreational product show.

D. (1) An organizer shall obtain a license from the commission on an application prescribed by and with the information required by the commission.

(2) The application shall be submitted to the commission not less than sixty days prior to the opening of the show.

(3) A license fee of five hundred dollars shall be included with the application.

E. Participation in a national recreational product show is limited to distributors or manufacturers who are licensed in Louisiana pursuant to this Chapter, except as provided in Subsection F of this Section.

F. In order to participate in a national recreational product show in Louisiana, non-Louisiana recreational product distributors and manufacturers shall register their participation with the commission not

later then ten business days prior to the date of the show. To register, each non-Louisiana recreational product distributor or manufacturer 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.

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

Acts 2012, No. 855, §1, eff. July 1, 2012.

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

A.(1) Whenever the commission receives an application for a motor vehicle dealer's license which would add a new motor vehicle dealership or authorize an existing motor vehicle dealership to deal in a new or additional make of motor vehicle which would establish an additional franchise in that area, or which would authorize an existing motor vehicle dealership to deal in additional makes, models, or classifications of motor vehicles designated in the franchise or any addendum thereto, it shall first notify the existing licensed motor vehicle dealership or dealerships selling the same line makes, models, or classifications within the community or territory in which the applicant proposes to conduct business. Any same line makes, models, or classifications dealership whose assigned community or territory includes the location of the proposed new motor vehicle dealership may object to the granting of the license.

(2) The reopening or replacement of a dealership in a location where the same line makes, models, or classifications has been sold by a licensed motor vehicle dealer within the previous two years shall not be considered an additional motor vehicle dealer under Paragraph (1) of this Subsection.

B. (1) Whenever the commission receives an application for a motor vehicle dealer's license which would relocate an existing motor vehicle dealership, including the transfer of a franchise and relocation to an existing motor vehicle dealership, it shall first notify the existing licensed motor vehicle dealership or dealerships selling the same line makes, models, or classifications within the community or territory in which the applicant proposes to conduct business. The existing same line makes, models, or classifications dealership or dealerships shall have the right to object to the granting of the license only if the proposed relocation is within a radius of five miles of its facility. However, without regard to distance, whenever the commission receives an application for the relocation of a motor vehicle dealership which would add an additional franchise to an existing same line makes, models, or classifications in dealership's community or territory, the affected dealership shall have the right to object.

(2) Whenever the commission receives a protest pursuant to the provisions of Paragraph (1) of this Subsection, the applicant and the manufacturer or distributor shall show, by a preponderance of the evidence, that the existing same line makes, models, or classifications motor vehicle dealership or dealerships will not be substantially harmed by locating the dealership within the five-mile area. Notwithstanding the provisions of R.S. 32:1251 to the contrary, the commission shall consider the financial impact on both the applicant and the existing dealership or dealerships.

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 fifteen-day objection period shall be waived upon written notification to the commission from all licensees entitled to object, that said licensees have no objections to the proposed change or addition for which said 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 hearing. Notice of hearing, and an opportunity to participate therein, shall be given to the motor vehicle dealer 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. (1) Whenever the commission receives a protest pursuant to the provisions of this Section, the

commission shall consider the following in determining whether there is good cause to issue a license:

(a) Whether the community or territory can support an additional dealership.

(b) Notwithstanding the provisions of R.S. 32:1251 to the contrary, the financial impact on both the applicant and the existing dealership or dealerships.

(c) Whether the existing motor vehicle dealerships of the same line makes, models, or classifications in the dealership's community or territory are providing adequate representation and convenient consumer care for the motor vehicles of the same line makes, models, or classifications located within that area.

(d) Whether the issuance of the license would increase competition or be in the public interest, or both.

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

Acts 1985, No. 911, §1; Acts 1987, No. 775, §1; Acts 1989, No. 262, §1; Acts 1989, No. 634, §1; Acts 1991, No. 296, §1, eff. July 2, 1991; Acts 1995, No. 51, §1, eff. June 9, 1995; Acts 1999, No. 1100, §1; Acts 2001, No. 1067, §1; Acts 2005, No. 500, §1, eff. July 12, 2005.

§1257.1. Repealed.

Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2012, No. 326, §2, eff. August 1, 2012.

§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 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:

(1) On satisfactory proof of unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in this Chapter.

(2) For fraud practiced or any material misstatement made by an applicant in any application for license under the provisions of this Chapter.

(3) For any failure to comply with any provision of this Chapter or with any rule or regulation adopted and promulgated by the commission under authority vested in it by this Chapter.

(4) Change of condition after license is granted or failure to maintain the qualifications for license.

(5) Continued or flagrant violation of any of the rules or regulations of the commission.

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

(7) Should the applicant have been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge under the law of the United States or of this or any other state.

(8) Upon a finding that, considering the matters set forth in the applicable paragraphs of R.S. 32:1254, the public interest is not served by the issuance of the license sought or continuance of the license previously granted.

(9) Failure to provide any bond or insurance required by this Chapter.

(10) Whenever a marine dealer intentionally removes marine engines from a boat package for the purpose of selling those engines separately in violation of a full-line marine engine dealer's area of responsibility, except that which may be done by a full-line dealer of that particular engine as it may be permitted under his full-line franchise agreement.

B. The commission may without prior notice deny the application for a license within thirty days after receipt thereof by written notice to the applicant stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the commission shall set the time and place of hearing a review of such denial, the same to be heard with reasonable promptness.

C. The commission may suspend or revoke a license issued or impose a civil penalty only after a hearing of which the licensee affected shall be given at least ten days written notice specifying the grounds or reasons for suspension, revocation, or penalty. Such notice may be served as provided by law for the service of notices or by mailing a copy by registered or certified mail to the last known residence or business address of such licensee.

D. (1) The hearing on denial of a license, suspension or revocation of a license, or imposition of a civil penalty shall be at such time and place as the commission may prescribe and the affected applicant or licensee shall be notified of such time and place at least ten days prior to the date of hearing. The hearing shall be scheduled to be held within sixty days of notification to the licensee or applicant of the violation. The commission shall in like manner also notify the person, firm, association, corporation, or trust with whom the applicant or licensee is associated, or in whose association he is about to enter. The commission shall have the power to compel the production of records and papers bearing upon the application or complaints. The commission shall have the power to subpoena and bring before it any person in this state, or take testimony of any such person by deposition in the same manner as prescribed by law in judicial procedure before courts of the state in civil cases. Any party to such hearing shall have the right to procure the attendance of witnesses in his behalf upon designating to the commission the person or persons sought to be subpoenaed.

(2) If the commissioner shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this Chapter or the rules and regulations of the commission his or its license may be suspended or revoked, or a civil penalty may be imposed, or both.

E. All licenses shall be granted or refused within thirty days after application therefor, and shall expire as provided in this Chapter, unless sooner revoked or suspended, except that where a complaint of unfair cancellation of a dealer franchise is in process of being heard, no replacement application for such franchise shall be considered until a decision is rendered by the commission.

Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2009, No. 403, §1, eff. July 7, 2009.

§1259. Injunctions; cease and desist orders

A. The commission is hereby authorized without posting of cost, bond, or deposit to institute an injunctive action in the district court for the parish in which the commission office is located or the district court for the parish in which the alleged offender is domiciled to enforce the provisions of this Chapter and any other law, rule, or regulation relating to the business for which a license is granted under this Chapter.

B. (1) If it appears to the commission at any time that a person is violating the provisions of this Chapter or any rule or order of the commission issued pursuant to this Chapter, it shall notify the person engaged in such conduct to appear and show cause why a cease and desist order should not be issued prohibiting the proscribed conduct. An interlocutory cease and desist order may be granted with or without bond or other undertaking if one of the following occurs:

(a) Such an order is necessary to the performance of the duties delegated to the commission by this Chapter or is otherwise necessary or convenient to maintaining the status quo between two or more

adverse parties before the commission.

(b) A party before the commission is entitled to relief demanded of the commission and all or part of the relief requires the restraint of some act prejudicial to the party.

(c) A person is performing or is about to perform or is procuring or allowing the performance of an act relating to the subject of a contested case pending before the commission, in violation of the rights of a party before the commission, and the act would tend to render the commission's order in that case ineffectual.

(d) Substantial injury to the rights of a person subject to the commission's jurisdiction is threatened irrespective of any remedy at law.

(2) Interlocutory cease and desist orders shall remain in effect until vacated or until incorporated into a final commission order. Permanent cease and desist orders may issue without regard to the enumerations in Paragraph (1) of this Subsection, but only in accordance with the provisions of this Chapter pertaining to the issuance of final commission orders. Appeal of any interlocutory cease and desist order shall be made to the commission prior to seeking judicial review under the provisions of this Chapter. Appeal of a permanent cease and desist order shall be conducted pursuant to the provisions of this Chapter pertaining to judicial review of final orders.

Acts 1985, No. 911, §1; Acts 2005, No. 500, §1, eff. July 12, 2005.

§1260. Penalties; other relief

A. (1) No civil penalty imposed for the violation of the provisions of this Chapter or the rules and regulations of the commission shall exceed five thousand dollars for each day such violation continues.

(2) On a second or subsequent violation, no civil penalty imposed shall exceed ten thousand dollars for each day such second or subsequent violation continues.

(3) In order to constitute a second or subsequent violation there must occur a lapse of at least one day following the first or previous violation.

(4) Any civil penalty imposed by the commission may, in the discretion of the commission, be suspended in whole or in part.

(5) No civil penalty imposed for the negligent filing or the untimely updating of information as required under the provisions of this Chapter or under the rules and regulations of the commission shall exceed one hundred dollars per day.

B. (1) In addition to the penalties provided under this Chapter, the commission is expressly empowered and authorized to order the renewal or reinstatement, as the case may be, of any franchise of a licensee which, after following the procedures under this Chapter, is found by the commission to have been unfairly cancelled or not renewed due to lack of just provocation or cause.

(2) The commission's authority to order a renewal or reinstatement, as the case may be, shall be consistent with the terms of the unfairly canceled franchise agreement.

(3) The commission shall order the renewal for an additional full franchise term or reinstatement for the remaining term of the franchise, as the case may be, under the franchise agreement.

(4) In addition to the penalties provided under this Chapter, the commission is expressly empowered and authorized, after following the procedures of this Chapter, to order the issuance of a franchise to a qualified transferee, whose application for transfer, sale, or exchange has been unreasonably withheld by a manufacturer, distributor, or converter and who meets the criteria generally applied by the manufacturer in approving new motor vehicle or specialty vehicle dealers and who agrees to be bound by all the terms and

conditions of the standard franchise.

C. The commission may render judgment for costs, or any part thereof, against any party to proceedings held or court reporter fees, commission attorney fees, the mileage and per diem of the commissioners, and other applicable and reasonable costs.

D. If the commission finds that it is necessary and appropriate for the protection of prospective motor vehicle or specialty vehicle dealers, because a distributor has failed to demonstrate that adequate arrangements have been made to fulfill the distributor obligations under the franchise to provide motor vehicles, equipment, signage, or other items included in the franchise, the commission may by order require the escrow of all fees, deposits, and other funds paid by the motor vehicle or specialty vehicle dealer until such obligations have been satisfied.

E. In addition to the penalties provided pursuant to this Chapter, the commission is expressly empowered and authorized, after following the procedures of this Chapter, to order the repurchase of all vehicles, signs, special tools, and automotive equipment and pay the costs to the licensee for the cost of transporting, handling, packing, and loading of vehicles, parts, signs, tools, and equipment subject to the repurchase requirements of R.S. 32:1268.

F. Upon the failure of any person to comply with any order of the commission issued as a result of a violation of this Chapter, or a rule or regulation adopted by the commission, the commission is authorized to file civil proceedings to enforce its order in the Twenty-Fourth Judicial District Court for the parish of Jefferson by rule to show cause conducted pursuant to the relevant provisions of the Louisiana Code of Civil Procedure. The commission shall be entitled to recover from such party all costs of the proceeding, including but not limited to court costs, discovery costs, and reasonable attorney fees incurred by the commission in enforcing its order.

Acts 1989, No. 153, §1; Acts 2003, No. 647, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2010, No. 1036, §1, eff. August 15, 2010.

§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:

(a) To induce or coerce, or attempt to induce or coerce, any licensee:

(i) To order or accept delivery of any recreational product, motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered.

(ii) To order or accept delivery of any vehicle with special features, appliances, accessories, or equipment not included in the list price of said vehicles as publicly advertised.

(iii) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(iv) To assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by law, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation between a manufacturer, distributor, wholesaler, distributor branch or factory branch, or officer, agent, or other representative thereof.

(v) To enter into a franchise with a licensee or during the franchise term, use any written instrument, agreement, release, assignment, novation, estoppel, or waiver, to attempt to nullify or modify any provision of this Chapter, or to require any controversy between a dealer and a manufacturer to be referred

to any person or entity other than the commission, or duly constituted courts of this state or the United States, if such referral would be binding upon the dealer. Such instruments are null and void, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation.

(vi) To waive the right to a jury trial.

(vii) To participate in an advertising group or to participate monetarily in an advertising campaign or contest or to purchase any promotional materials, showroom, or other display decorations or materials at the expense of such motor vehicle dealer or specialty dealer.

(viii) To adhere to performance standards that are not applied uniformly to other similarly situated motor vehicle dealers or specialty dealers. Any such performance standards shall be fair, reasonable, equitable, and based on accurate information. If dealership performance standards are based on a survey, the manufacturer, converter, distributor, wholesaler, distributor branch, or factory branch shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer or specialty vehicle dealer of the same line make covered by the survey request. Each response to a survey used by a manufacturer in preparing an evaluation or performance-rating of a motor vehicle dealer shall be made available to that motor vehicle dealer, or it cannot be used by the manufacturer. However, if a customer requests that the manufacturer or distributor not disclose the consumer's identity to the dealer, the manufacturer may withhold the consumer's identity in providing the survey response to the dealer, and the manufacturer may use the response. Any survey used must have the following characteristics:

(aa) It was designed by experts.

(bb) The proper universe was examined.

(cc) A representative sample was chosen.

(dd) The data was accurately reported.

(ix) To release, convey, or otherwise provide customer information, if to do so is unlawful or if the customer objects in writing. This does not include information that is necessary for the manufacturer to meet its obligations to the dealer or consumers in regard to contractual responsibilities, vehicle recalls, or other requirements imposed by state or federal law. The manufacturer is further prohibited from providing any consumer information received from the dealer to any unaffiliated third party.

(x) To pay the attorney fees of the manufacturer or distributor related to hearings and appeals brought under this Chapter.

(b) To refuse to deliver to any licensee having a franchise or contractual arrangement for the retail sale of vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or factory branch, any motor vehicle, publicly advertised for immediate delivery, within sixty days after such dealer's order shall have been received.

(c) To threaten to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or factory branch and said dealer for any reason including but not limited to failure to meet performance standards.

(d) To unfairly, without just cause and due regard to the equities of such dealer, cancel the franchise of any licensee. Failure to meet performance standards based on a survey of sales penetration in a regional, national, territorial, or other geographic area shall not be the sole cause for cancellation of a franchise. The nonrenewal of a franchise or selling agreement with such dealer or his successor without just provocation or cause, or the refusal to approve a qualified transferee or qualified successor to the dealer-operator as provided for in the franchise or selling agreement, or solely for failure to meet performance standards based on a survey of sales penetration in a regional, national, territorial, or other geographic area, shall be deemed an evasion of this Paragraph and shall constitute an unfair cancellation, regardless of the terms or provisions of such franchise or selling agreement. However, at least ninety-days notice shall be given

to the dealer of any cancellation or nonrenewal of a franchise except for a cancellation arising out of the financial default of the motor vehicle dealer or fraudulent activity of the dealer principal which results in the conviction of a crime punishable by imprisonment. The provisions of this Subsection relating to performance standards shall not apply to recreational products dealers.

(e) To refuse to extend to a licensee the privilege of determining the mode or manner of available transportation facility that such dealer desires to be used or employed in making deliveries of vehicles to him or it.

(f) To resort to or use any false or misleading advertisement in connection with his business as such manufacturer of motor vehicles, distributor, wholesaler, distributor branch or factory branch, or officer, agent, or other representative thereof.

(g) To delay, refuse, or fail to deliver motor vehicles in reasonable quantities relative to the licensee's facilities and sales potential in the relevant market area. This Subparagraph shall not be valid, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, or other such party.

(h) To ship or sell motor vehicles or recreational products to a licensee prior to the licensee having been granted a license by the commission to sell such vehicles.

(i) To unreasonably withhold consent to the sale, transfer, or exchange of the franchise to a qualified transferee capable of being licensed as a dealer in this state, provided the transferee meets the criteria generally applied by the manufacturer in approving new dealers and agrees to be bound by all the terms and conditions of the standard franchises.

(j) To fail to respond in writing to a written request for consent as specified in Subparagraph (I) of this Paragraph within sixty days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for such purposes and containing the information required therein. Failure to respond shall be deemed to be consent to the request.

(k) (i) To sell or offer to sell a new or unused motor vehicle or recreational product directly to a consumer except as provided in this Chapter, or to compete with a licensee in the same-line makes, models, or classifications operating under an agreement or franchise from the aforementioned manufacturer. A manufacturer shall not, however, be deemed to be competing when any one of the following conditions are met:

(aa) Operating a dealership temporarily for a reasonable period, not to exceed two years.

(bb) Operating a bona fide retail dealership which is for sale to any qualified independent person at a fair and reasonable price, not to exceed two years.

(cc) Operating in a bona fide relationship in which a person independent of a manufacturer has made a significant investment subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

(ii) After any of the conditions have been met under Subitems (aa) and (bb) of Item (i) of this Subparagraph, the commission shall allow the manufacturer to compete with licensees of the same-line makes, models, or classifications under an agreement or franchise from said manufacturer for longer than two years when, in the discretion of the commission, the best interest of the manufacturer, consuming public, and licensees are best served.

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

(m) To fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the terms of compensation that shall be filed with the commission on or before October first of each year. The commission shall find the compensation to be reasonable or the manufacturer shall remedy any deficiencies.

(n) To fail to designate and provide to the commission in writing the community or territory assigned to a licensee.

(o) To fail or refuse to sell or offer to sell to all motor vehicle franchisees in a line make, every motor vehicle sold or offered for sale under a franchise to any motor vehicle franchisee of the same-line make, or to unreasonably require a motor vehicle dealer to pay an extra fee, purchase unreasonable advertising displays or any other materials, or to remodel, renovate, or recondition its existing facilities as a prerequisite to receiving a certain model or series of vehicles. However, the failure to deliver any such motor vehicle shall not be considered a violation of this Section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo or other cause of which the franchisor has no control. This Subparagraph shall not apply to recreational product manufacturers.

(p) To unreasonably discriminate among competing, similarly situated, same-line make dealers in the sales of vehicles, in the availability of such vehicles, in the terms of incentive programs or sales promotion plans, or in other similar programs.

(q) To terminate, cancel, or refuse to continue any franchise agreement based upon the fact that the motor vehicle dealer owns, has an investment in, participates in the management, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles at a different dealership location, or intends to or has established another make or line of new motor vehicles in the same dealership facilities of the manufacturer or distributor.

(r) 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 such requirements would be reasonable and justified by business considerations. The burden of proving that such 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.

(s) To use any subsidiary, affiliate, or any other controlled person or entity, or to employ the services of a third party, to accomplish what would otherwise be illegal conduct under this Chapter on the part of the manufacturer or distributor.

(t) To operate a satellite warranty and repair center, to authorize a person to perform warranty repairs who is not a motor vehicle dealer, or to authorize a motor vehicle dealer to operate a satellite warranty and repair center within the community or territory of a same-line or make motor vehicle dealer. This Subparagraph shall not apply to recreational product manufacturers.

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(u) To make a change in the area of responsibility described in the franchise agreement or sales and service agreement of a dealer, without the franchisor, converter, or manufacturer giving said dealer and the commission no less than sixty days prior written notice by certified or registered mail.

(v) To attempt to induce or coerce, or to induce or coerce, any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or factory branch or representative thereof, or to do any other act unfair to said dealer.

(w)(i) To coerce or attempt to coerce any retail motor vehicle dealer or prospective retail motor vehicle dealer to offer to sell or sell any extended service contract or extended maintenance plan or gap product offered, sold, backed by, or sponsored by the manufacturer or distributor or affiliate or sell, assign, or transfer any retail installment sales contract or lease obtained by the dealer in connection with the sale or lease by him of motor vehicles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified persons by any of the following:

(aa) By any statement, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is express or implied or made directly or indirectly.

(bb) By any act that will benefit or injure the dealer.

(cc) By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling the motor vehicle on the condition that the dealer shall offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or that the dealer sell, assign, or transfer his retail installment sales contract on or lease of the vehicle, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified person.

(dd) Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition.

(ii) Nothing contained in this Subparagraph shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail motor vehicle dealer or prospective retail motor vehicle dealer who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any retail installment sale or lease by him of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company.

(x) To charge back, deny vehicle allocation, withhold payments, or take any other adverse actions against a motor vehicle dealer because of a sale of a new motor vehicle that is exported from the United States, unless it is shown that the dealer knew or reasonably should have known on the date of the sale that the new motor vehicle was to be exported. A motor vehicle dealer shall be rebuttably presumed to have no knowledge of the export if the motor vehicle is sold by the dealer to a resident of the United States who titles and registers the motor vehicle in any state within the United States.

(y) To disqualify a manufacturer's sales or service satisfaction survey that pertains to a dealership employee's personal motor vehicle or specialty vehicle solely because it was mailed or communicated electronically from a dealership.

(2) For a motor vehicle dealer, specialty vehicle dealer, recreational product dealer, used motor vehicle dealer, or a motor vehicle salesman:

(a) To require a purchaser of a vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; however, this prohibition shall not apply as to special features, appliances, accessories, or equipment which are permanently affixed to the vehicle.

(b) To represent and sell as a new vehicle any vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(c) To resort to or use any false or misleading advertisement in connection with his business as such vehicle dealer or motor vehicle salesman.

(d) To sell or offer to sell makes, models, or classifications of new vehicles for which no franchise and license to sell is held.

(e) Except as otherwise approved by the commission, to sell or offer to sell a vehicle from an unlicensed location.

(f) To deliver to a prospective purchaser a new or a used vehicle on a sale conditioned on financing, i.e., a spot delivery, except on the following terms and conditions which shall be in writing and shall be a part of the conditional sales contract or other written notification signed by the purchaser:

(i) That if the sale is not concluded by the financing of the sale to the purchaser within twenty-five days of the delivery, the sale contract shall be null and void.

(ii) That the vehicle being offered for trade-in by the purchaser shall not be sold by the dealer until the conditional sale is complete.

(iii) That there shall be no charge to the purchaser should the conditional sale not be completed, including but not limited to mileage charges or charges to refurbish the vehicle offered for trade-in. However, the purchaser shall be responsible for any and all damages to the vehicle or other vehicles damaged by the fault of the purchaser and any and all liability incurred by the purchaser during the purchaser's custody of the vehicle to the extent provided for in R.S. 22:1296.

(iv) That if the conditional sale is not completed, the dealer shall immediately refund to the purchaser upon return of the vehicle all sums placed with the dealership as a deposit or any other purpose associated with the attempted sale of the vehicle.

(v) That the prospective purchaser shall return the vehicle to the dealership within forty-eight hours of notification by the dealer that the conditional sale will not be completed. If the prospective purchaser does not return the vehicle to the dealership within forty-eight hours of notification by the dealer, an authorized agent of the dealer shall have the right to recover the vehicle without the necessity of judicial process, provided that such recovery can be accomplished without unauthorized entry into a closed dwelling, whether locked or unlocked and without a breach of peace.

(g) To pay a fee to any person in return for the solicitation, procurement, or production by that person of prospective purchasers for new and used vehicles, except to a salesman licensed under the provisions of this Chapter.

(h) To fail to fully and completely explain each charge listed on a retail buyer's order or vehicle invoice prior to the purchase of a vehicle.

(I) When selling a vehicle to a consumer, to assess any consumer services fees, which shall include fees for treating the interior upholstery of the vehicle, oil changes, roadside assistance, dealer inspections, or any other service offered by the dealer, without allowing the buyer to refuse such services and be exempt from payment for such services. The provisions of this Subparagraph shall not apply to dealer-added options or accessories which are permanently affixed to the vehicle.

(j) To fail to disclose to a purchaser, in writing, which components of a specialty vehicle are subject to a manufacturer's or distributor's warranty agreement and which components are subject to a specialty vehicle dealer's or other warranty agreement. The specialty vehicle dealer shall identify in writing the location of the two nearest authorized manufacturer or distributor warranty service providers. School bus warranty repair work, except for engine and transmission repair work, may also be performed by repair facilities, authorized by the manufacturer or distributor, which are not school bus dealers. Further, nothing in this Chapter shall prohibit a manufacturer of school buses licensed by the Louisiana Motor Vehicle Commission from authorizing warranty and other repair or maintenance services to be performed at any location of a motor vehicle dealer licensed under this Chapter which holds a franchise from any affiliate or subsidiary of the school bus manufacturer.

(k) (i) To fail to disclose to a purchaser in writing on the sales contract, buyer's order, or any other document that the dealer may be participating in finance charges associated with the sale.

(ii) To participate in a finance charge that would result in a difference between the buy rate

and the contract rate of more than three percentage points.

(iii) The provisions of this Subparagraph shall apply only to transactions subject to the Louisiana Motor Vehicle Sales Finance Act.

(3) For a motor vehicle or recreational product lessor or motor vehicle lessor agent:

(a) To represent and sell as a new vehicle any vehicle which has been used or intended to be used and operated for leasing and rental purposes.

(b) To resort to or use any false or misleading advertising in connection with the business of leasing or renting vehicles.

(c) To lease, rent, sell, or offer to sell a vehicle from a location not licensed for such activity.

(d) To rent or lease any vehicle which has been located within this state for a period of thirty days or more, unless such vehicle has been issued a Louisiana license plate by, and all license fees and taxes have been paid to, this state.

(e) To pay a fee to any person in return for the solicitation, procurement, or production by that person of prospective lessees of vehicles, unless the person receiving the fee is a lease facilitator who holds a valid license as provided by this Chapter and a valid appointment from the motor vehicle lessor as provided by R.S. 32:1266(B)(1). The fees prohibited by this Subparagraph shall not include amounts paid to a dealer as part of the consideration for the sale or assignment of a lease or leased vehicle or other amounts paid to the dealer who transfers the title on the vehicle or assigns the lease contract to the motor vehicle lessor.

(f) To fail to fully and completely explain each charge listed on a retail buyer's or lessee's order or vehicle invoice or leasing agreement prior to the lease of a vehicle.

(g) When leasing a vehicle to a consumer, to assess any consumer services fees, which shall include fees for treating the interior upholstery of the vehicle, oil changes, roadside assistance, dealer inspections, or any other service offered by the motor vehicle lessor, without allowing the consumer to refuse such services and be exempt from payment for such services. The provisions of this Subparagraph shall not apply to motor vehicle lessor-added options or accessories which are permanently affixed to the vehicle.

(4) For a lease facilitator:

(a) To hold himself out to any person as a "leasing company", "leasing agent", "lease facilitator", or similar title, directly or indirectly engaged in the business of a lease facilitator, or otherwise engaged in the solicitation or procurement of prospective lessees for vehicles not titled in the name of and registered to the lease facilitator, without holding a valid lease facilitator license and being in compliance with the terms of this Chapter.

(b) To sell or offer to sell a new vehicle.

(c) To accept a fee from a dealer or consumer.

(d) To sign a vehicle manufacturer's statement of origin to a vehicle, accept an assignment of a manufacturer's statement of origin to a vehicle, or otherwise assume any element of title to a new vehicle.

(e) To procure or solicit prospective lessees for or on behalf of any person other than a motor vehicle lessor.

(f) To act in the capacity of or engage in the business of a lease facilitator without a valid appointment from a motor vehicle lessor to act on behalf of the motor vehicle lessor in soliciting prospective lease clients or customers as provided by this Chapter.

(5) For a broker:

(a) To hold himself out to any person as a "broker", "purchasing company", "sales agent", or similar title, engaged in the business of broker, or otherwise engaged in the solicitation or procurement of prospective purchasers for vehicles not titled in the name of and registered to the broker, unless the broker holds a valid broker license and is in compliance with the terms of this Chapter.

(b) To sell, or offer to sell, or display a new vehicle.

(c) To be paid a fee by a dealer.

(d) To sign a vehicle manufacturer's statement of origin to a vehicle, accept an assignment of a manufacturer's statement of origin to a vehicle, or otherwise assume any element of title to a new vehicle.

(e) To act in the capacity of or engage in the business of a broker without a valid license issued as provided by this Chapter and a valid appointment from a motor vehicle lessor to act on behalf of the motor vehicle lessor in soliciting prospective lease clients or customers as provided by this Chapter.

(f) To fail to execute a written brokering agreement and provide a completed copy to both of the following:

(i) Any consumer entering into the brokering agreement. The completed copy shall be provided prior to the consumer's signing an agreement for the purchase of the vehicle described in the brokering agreement, or, prior to accepting one hundred dollars or more from that consumer, whichever comes first.

(ii) The selling dealer. The completed copy shall be provided prior to the selling dealer's entering into a purchase agreement with the consumer at the time of delivery.

(g) To accept a purchase deposit from any consumer that exceeds two point five percent of the selling price of the vehicle described in the brokering agreement.

(h) To fail to refund any purchase money, including purchase deposits, upon demand by a consumer at any time prior to the consumer's signing a vehicle purchase agreement with a selling dealer of the vehicle described in the brokering agreement.

(I) To fail to cancel a brokering agreement and refund, upon demand, any money paid by a consumer, including any brokerage fee, under any of the following circumstances:

(i) When the final price of the brokered vehicle exceeds the purchase price listed in the brokering agreement.

(ii) When the vehicle delivered is not as described in the brokering agreement.

(iii) When the brokering agreement expires prior to the customer's being presented with a purchase agreement from a selling dealer arranged through the brokering dealer that contains a purchase price at or below the price listed in the brokering agreement.

(j) To act as a seller and provide brokering services, both in the sale transaction.

(k) To fail to disclose to the consumer the dollar amount of any fee that the consumer is obligated to pay to the broker. This arrangement shall be confirmed in a brokering agreement.

(l) To fail to maintain, for a minimum of three years, a copy of the executed brokering agreement and other notices and documents related to each brokered transaction.

(m) To fail to advise the consumer, prior to accepting any money, that a full refund will be given if the motor vehicle ordered through the broker is not obtained for the consumer.

(6) For any person or other licensee:

(a) 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 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 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) Repealed.

(b) In making a determination of whether there is good cause for permitting a proposed modification, the commission may consider any relevant factor including:

(i) The reasons for the proposed modification.

(ii) Whether the proposed modification is applied to or affects all licensees in a nondiscriminating manner.

(iii) The degree to which the proposed modification will have a substantial and adverse effect upon the licensee's investment or return on investment.

(iv) Whether the proposed modification is in the public interest.

(v) The degree to which the proposed modification is necessary to the orderly and profitable distribution of vehicles and other services by the licensee.

(vi) Whether the proposed modification is offset by other modifications beneficial to the licensee.

(c) The decision of the commission shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed modification. The commission shall deliver copies of the decision to the parties personally or by registered mail.

(7) For any employee of a licensee, while acting in the scope of his employment, to accept any payment, commission, fee, or compensation of any kind from any person other than the employing licensee, unless such payment is fully disclosed to and approved by the employing license.

B. The provisions of this Section shall not apply to a dealer, manufacturer, distributor, wholesaler, distributor branch, factory branch, or convertor of marine products, motorcycles or all-terrain vehicles, or recreational vehicles, or any officer, agent, or other representative thereof.

Acts 1999, No. 1084, §1; Acts 2005, No. 121, §1; Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2007, No. 27, §1, eff. June 18, 2007; Acts 2007, No. 170, §1, eff. June 27, 2007; Acts 2008, No. 415, §2, eff. Jan. 1, 2009; Acts 2008, No. 483, §1; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2011, No. 89, §1, eff. August 15, 2011; Acts 2012, No. 326, §1, eff. August 1, 2012; Acts 2012, No. 150, §1 . eff. August 1, 2012, **Acts 2013, No. 61, § , eff. August 1, 2013.**

§1261.1. Indemnification of franchised dealers

A. Notwithstanding the terms of any franchise agreement, each manufacturer or converter shall indemnify and hold harmless its franchised dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the dealer, arising out of complaints, claims, or lawsuits including but not limited to strict liability, negligence, misrepresentation, express or implied warranty, or

rescission of sale to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly, or design of motor vehicles, specialty vehicle, recreational product, parts, or accessories, or other functions by the manufacturer of converter, which are beyond the control of the dealer.

B. The provisions of this Section shall not apply to a franchised recreational vehicle dealer, marine dealer, or motorcycle or all-terrain vehicle dealer.

Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2012, No. 326, §1, eff. August 1, 2012.

§1261.2. Payment to dealers; penalties

It shall be a violation of this Chapter for a motor vehicle manufacturer, distributor, wholesaler, distributor branch, factory branch, officer, agent or other representative thereof, to fail to pay a dealer all monies due the dealer, except manufacturer hold-back amounts, within thirty days of the date of completion of the transactions or submissions of the claims giving rise to the payments to the dealers. Failure to make payments shall subject the manufacturer, distributor, wholesaler, distribution branch, factory branch, officer, agent, or other representative thereof, to a penalty of the one and one-half percent interest per month, or fraction thereof, until sums due the dealer are fully paid.

Acts 2009, No. 403, §1, eff. July 7, 2009.

§1262. Warranty; compensation; audits of dealer records

A. (1) It shall be a violation of this Chapter for a manufacturer, a distributor, a wholesaler, distributor branch or factory branch, or officer, agent or other representative thereof to fail to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by such dealer to perform under and comply with a manufacturer's or a distributor's warranty agreement.

(2) In no event shall any manufacturer or distributor pay its dealers at a price or rate for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind.

(3) Warranty work includes parts and labor performed.

(4) All claims made by the dealer for compensation under this Subsection shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval.

(5) The obligations in this Subsection as they relate to recreational products may be modified by contract.

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

(2) No claim which has been approved and paid may be charged back to the dealer unless it can be shown that one or all of the following applies:

(a) The claim was false or fraudulent.

(b) The repairs were not properly made.

(c) The repairs were unnecessary to correct the defective condition under generally accepted standards of workmanship.

(d) The dealer failed to reasonably substantiate the repair in accordance with reasonable written requirements of the manufacturer or distributor, if the dealer was notified of the requirements prior to the time the claim arose and if the requirements were in effect at the time the claim arose.

(3) A manufacturer or distributor shall not deny a claim solely based on a dealer's incidental failure to comply with a specific claim processing requirement, or a clerical error, or other administrative technicality.

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

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

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

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

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

(8) The dealer shall not be charged back for any rebate paid to a consumer pursuant to a manufacturer's rebate program, provided the dealer acted in good faith when relying on the consumer's qualifying information and otherwise complied with the program guidelines and documentation requirements. A manufacturer's rebate program shall include but not limited to a rebate program that targets college graduates, military personnel, first-time buyers, owner loyalty, family relationships, and any other similar program.

C. The provisions of this Section shall not apply to a dealer, manufacturer, distributor, wholesaler, distributor branch, or factory branch of marine products, motorcycles or all-terrain vehicles, or recreational vehicles, or any officer, agent, or other representative thereof.

Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2008, No. 233, §1; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2011, No. 89, §1, eff. August 15, 2011; Acts 2012, No. 326, §1, eff. August 1, 2012**, Acts 2013, No. 61, §, eff. August 1, 2013.**

§1263. Motor vehicle repairs

A. Suppliers of mechanical repairs and services for any vehicle subject to regulation pursuant to this Chapter shall provide each consumer with an itemized bill indicating repairs and services performed, parts replaced, or materials used, the total labor charge, and the identity of the mechanic, repairman, or supplier

who performed the work. However, nothing in this Section shall prohibit a supplier of mechanical repairs and services from charging a service fee for the use of shop supplies such as rags, fender covers, small amounts of fluid, or other items which are not itemized, provided that such fee does not exceed five percent of the total invoice for mechanical repairs or thirty-five dollars, whichever is less.

B. The provisions of this Section shall not apply to suppliers of mechanical repairs and services for any recreational vehicle subject to regulation of this Chapter.

Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2012, No. 326, §1, eff. August 1, 2012.

§1264. Damage disclosure

A. Whenever a new 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. Such 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 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, motorcycle or all-terrain vehicles, or recreational vehicles.

Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2012, No. 326, §1, eff. August 1, 2012.

§1264.1. Notice regarding recalls

It shall be a violation of this Chapter for a motor vehicle dealer to sell a new motor vehicle without first supplying a prospective buyer with the following notice: "A new motor vehicle may have been subject to a National Highway Traffic Safety Administration required recall which would be repaired in accordance with manufacturer standards approved by the National Highway Traffic Safety Administration. If such a repair is a concern before you purchase, please ask for a copy of the recall notice, if applicable, to the vehicle being sold." This notice shall be included on the buyer's order in a box and in bold print which is signed by the buyer and the seller or his representative next to the box. If the buyer requests the recall notice, the recall notice shall be included in the sales transaction. If the selling dealer performed the repair, the documents supporting the repair shall also be included in the sales transaction.

Acts 2010, No. 1046, §1, eff. August 15, 2010.

§1265. Sale of water-damaged vehicles

A. No person shall sell, transfer, or convey any new or used motor vehicle or recreational product to any person without notifying the buyer or receiver of the motor vehicle or recreational product in writing of the extent of any water damage from flooding which occurred to the motor vehicle or recreational product prior to the transaction.

B. If a sale, transfer, or conveyance of a new or used motor vehicle or recreational product occurs in

violation of Subsection A of this Section, the person receiving ownership and title to the motor vehicle or recreational product who is not otherwise aware of the damage at the time of the transaction may bring an action to set aside the transaction within one year from the date of the transaction and receive all monies or other property given as consideration for the vehicle less a reasonable assessment for miles drive.

C. For the purposes of this Section, a "water-damaged vehicle" means any motor vehicle or recreational product whose power train, computer, or electrical system has been damaged by flooding.

Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2009, No. 403, §1, eff. July 7, 2009.

§1266. Motor vehicle lessors; appointment of motor vehicle lease facilitators

A. (1) Except as otherwise provided by this Chapter, a motor vehicle lessor franchisor may not terminate a franchise prior to the expiration of its term, except for good cause. Good cause shall include but not be limited to the failure of the franchisee to comply with any lawful requirement of the franchise, after being given notice thereof, and a reasonable opportunity, which in no event need be more than thirty days, to cure the failure. Nothing herein shall permit the cancellation of a franchise solely for failure to meet performance standards based on a survey of sales penetration in a regional, national, territorial, or other geographic area.

(2) If during the period in which the franchise granted by a motor vehicle lessor franchisor is in effect, there occurs any of the following events, which is relevant to the franchise, immediate notice of termination without opportunity to cure shall be reasonable:

(a) The franchisee abandons the franchise by failing to operate the business for five consecutive days during which the franchisee is required to operate the business under the terms of the franchise, unless such failure to operate is due to fire, flood, or storms beyond the franchisee's control.

(b) The motor vehicle lessor franchisor and the franchisee agree in writing to terminate the franchise.

(c) The franchisee fails, for a period of ten days following notification of noncompliance, to comply with any federal, state, or local law or regulation applicable to the operation of the franchise.

(d) The franchised business or business premises of the franchise is seized, taken over, or foreclosed on by a creditor, lienholder, or lessor, provided that a final judgment against the franchisee remains unsatisfied for thirty days, unless an appeal bond has been filed.

(e) The franchisee fails to pay any franchise fees or other amounts due to the franchisor within ten days of receiving written notice that such fees are overdue.

(3)(a) No motor vehicle lessor franchisor shall fail to renew a franchise unless the franchisor provides the following:

(i) Written notice to the franchisee at least one hundred eighty days prior to his intention not to renew.

(ii) The franchisee with an opportunity to sell his business, during the one hundred eighty days prior to the expiration of the franchise, to a purchaser meeting the franchisor's then current requirements for granting new franchises, or if not granting a significant number of new franchises, then the current requirements for granting renewal franchises.

(iii) That the refusal not to renew is not for the purpose of converting the franchisee's business premises to operation by employees or agents of the franchisor for such franchisor's own account, provided that nothing in this Section shall prohibit a franchisor from exercising a right of first refusal to purchase a franchisee's business.

(iv) That upon expiration of the franchise, the franchisor agrees not to seek to enforce any

covenant of the unrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

(b) Termination of a franchise shall be permitted pursuant to Paragraphs (1) and (2) of this Subsection, or if the franchisee and the franchisor agree not to renew the franchise.

B. (1) A motor vehicle lessor may appoint one or more facilitators licensed pursuant to the terms of this Chapter to represent the motor vehicle lessor in obtaining prospective lease customers. An appointment complies with the requirements of this Subsection if it is in writing, discloses its terms, and otherwise complies with the rules of the commission.

(2) In a lease contract or agreement between a motor vehicle lessor and a lessee solicited, procured, or produced by a lease facilitator, the motor vehicle lessor shall disclose to the lessee that a fee was paid, or will be paid to the lease facilitator for the solicitation, procurement, or production of the lessee or the lease. The motor vehicle lessor shall include the disclosure required by this Paragraph in a prominent position in one or both of the following manners:

(a) On the face of the written memorandum of the lease, contract, or agreement.

(b) On a separate instrument signed by the lessee at the same time as the signing of the lease contract or agreement.

C. (1) Except as otherwise provided by this Section, a lease facilitator may accept a fee for procuring a vehicle lessee or prospective vehicle lessee for or on behalf of a lessor.

(2) Nothing in this Section shall limit the ability of a lease facilitator to accept an appointment from more than one lessor.

(3) Nothing in this Section shall prohibit a lease facilitator from representing a lessor or lessee in the acquisition of a motor vehicle for the purpose of leasing the vehicle to another person.

Acts 2005, No. 500, §1, eff. July 12, 2005.

§1267. Succession; right of first refusal

A. (1) The terms of the franchise notwithstanding, any dealer may appoint by will, or other written instrument, a designated successor to succeed in the ownership interest of the dealer in the dealership upon the death or incapacity of the dealer.

(2) Unless good cause exists for refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased or incapacitated dealer of a dealership may succeed to the ownership of the dealership under the existing franchise if:

(i) The designated successor gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the dealer within sixty days of the dealer's death or incapacity.

(ii) The designated successor agrees to be bound by all the terms and conditions of the franchise.

(3) The manufacturer or distributor may request, and the designated successor shall provide, promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

(4) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated dealer, the manufacturer or distributor may, not more than sixty days following receipt of notice of the designated successor's intent to succeed and receipt of such personal or financial data, serve upon the designated successor notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer not earlier than six months from the date such notice

is served.

(5) The notice must state the specific grounds for the refusal to honor the succession.

(6) If notice of refusal and discontinuance is not timely served upon the designated successor, the franchise shall continue in effect subject to termination only as otherwise permitted by this Chapter.

(7) In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards as a franchisee.

(8) If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated owner for good cause, then and in such event:

(i) The manufacturer or distributor shall allow the designated successor a reasonable period of time which shall not be less than six months in which to consummate a sale of the dealership. Any such sale shall be subject to R.S. 32:1261(A)(1)(d).

(ii) Upon termination of the franchise pursuant to such refusal, the provisions of R.S. 32:1268 shall apply.

B. In the event of a proposed sale or transfer of a dealership and if the franchise agreement has a right of first refusal in favor of the manufacturer or distributor, then, notwithstanding the terms of the franchise agreement, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the motor vehicle dealer's assets or ownership if all of the following requirements are met:

(1) In order to exercise its right of first refusal, the manufacturer or distributor shall notify the motor vehicle dealer in writing within sixty days of his receipt of the completed proposal for the proposed sale or transfer and all related agreements.

(2) The applicability of R.S. 32:1261(A)(1)(l) shall not be expanded or changed.

(3) The exercise of the right of first refusal will result in the dealer receiving the same or greater consideration as he has contracted to receive in connection with the proposed change of ownership or transfer.

(4) The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealers, or to a qualified manager with at least two years management experience at the dealership of one or more of these dealers, or to a partnership or corporation controlled by such persons.

(5)(a) The manufacturer or distributor agrees to pay the reasonable expenses, including attorney fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Such expenses and attorney fees shall be paid to the proposed new owner or transferee at the time of closing of the sale or transfer for which the manufacturer or distributor exercised its right of first refusal.

(b) No payment of such expenses and attorney fees shall be required if the new owner or transferee has not submitted or caused to be submitted an accounting of those expenses within thirty days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. A manufacturer or distributor may request such accounting before exercising his right of first refusal.

(6) The dealer shall not have any liability to any person as a result of a manufacturer's exercising its right of first refusal and the manufacturer or distributor shall assume the defense of the selling dealer for any claim by the proposed owner or transferee arising from the exercise of the right of first refusal.

C. The provisions of this Section shall not apply to the succession of any marine dealer, motorcycle or all-terrain vehicle, or recreational vehicle.

Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2012, No. 326, §1, eff. August 1, 2012.

§1268. Requirements upon termination; penalty; indemnity

A. (1) In the event the licensee ceases to engage in the business of being a motor vehicle, recreational products, or specialty vehicle dealer, or ceases to sell a particular make of motor vehicle, recreational products, or specialty 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:

(a) All new motor vehicles, recreational products, and specialty vehicles of the current and last prior model year delivered to the licensee and parts on hand purchased in the ordinary course of business that have not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the licensee. As to recreational products dealers, the repurchase of parts shall be limited to those listed in the manufacturer's price book. The motor vehicles, recreational products, and specialty vehicles and parts shall be repurchased at the cost to the licensee which shall include without limitation freight and advertising costs, less all allowances paid to the dealer, except that new automobiles shall be purchased on the schedule as follows:

(i) Vehicles with 0 - 1,000 miles at the cost to the licensee.

(ii) Vehicles with 1,001 - 6,000 miles at the cost to the licensee reduced by the net discount value of each mile in excess of 1,000 miles, where "net discount value" is determined according to the following formula: cost to the licensee multiplied by total mileage in excess of 1,000 miles divided by 100,000, and where "net cost" equals the dealer cost plus any charges by the manufacturer, distributor, or representative for distribution, delivery, advertising, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles.

(iii) Vehicles with 6,001 miles or over - no obligation to repurchase.

(iv) Any mileage recorded by a manufacturer in distributing a motor vehicle to a motor vehicle dealer shall not be included in the calculation as provided in this Subparagraph.

(b) At fair market value, each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, converter, distributor, or representative if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative. Fair market value shall be no less than cost of acquisition of the sign by the dealer.

(c) At fair market value, all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased in the ordinary course of business from or 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 dealer.

(d) The manufacturer, converter, distributor, or representative shall pay to the dealer the costs of transporting, handling, packing, and loading of recreational product, motor and specialty vehicles, or parts, signs, tools, and equipment subject to repurchase.

(2)(a) After a motor vehicle dealer terminates his franchise, the manufacturer or converter shall make required repurchases within thirty days after such dealer has satisfied all of the following conditions:

(i) The motor vehicle dealer submits to the manufacturer, by certified mail, return receipt

requested, or commercial delivery service with verification of receipt, a final inventory of motor vehicles and parts, special tools, and automotive services on hand.

(ii) The motor vehicle dealer tenders the parts, special tools, and automotive service equipment to the manufacturer.

(b) After a specialty vehicle dealer terminates his franchise, the manufacturer or converter shall make required repurchases within thirty days after such dealer has submitted to the manufacturer by certified mail, return receipt requested, or commercial delivery service with verification of receipt, a final inventory of vehicles and parts on hand.

(c) After a recreational products dealer terminates his franchise, the manufacturer or converter shall make required repurchases within sixty days after such dealer has submitted to the manufacturer by certified mail, return receipt requested, or commercial delivery service with verification of receipt, a final inventory of vehicles and parts on hand. This Subparagraph shall not apply to the repurchase of marine products and related items.

B. Failure to make such 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 product, specialty and motor vehicles and parts, signs, special tools, and automotive service equipment, payable to the dealer, as long as the repurchase is not made.

C. (1) Upon the involuntary termination, nonrenewal, or cancellation of any franchise by the manufacturer or converter, except for termination, nonrenewal, or cancellation resulting from a felony conviction, notwithstanding the terms of any franchise, whether entered into before or after the enactment of this Chapter or any of its provisions, the new motor vehicle or specialty vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or converter as agreed by the parties, or lacking agreement, as determined by the commission, for the dealership facilities if the facilities were required to be purchased or constructed as a precondition to obtaining the franchise or to its renewal; provided that if such facilities were leased and the lease were required as a precondition to obtaining the franchise or to its renewal, then the manufacturer or converter shall be liable for one year's payment of the rent or the remainder of the term of the lease, whichever is less.

(2) Payment under this Section shall entitle the manufacturers, converters, or distributors to possession and use of the facility.

(3) As used in this Section, "manufacturer" shall include a manufacturer, a converter, a distributor, a factory branch, distributor branch, or other subsidiary thereof.

(4) The obligation of the manufacturer or converter to purchase a dealership facility, pursuant to this Section, is equally applicable if an entity or person affiliated with the dealer is the owner or lessor of the facility.

D. Notwithstanding any provision of law to the contrary, the provisions of this Section shall not apply to a marine dealer, motorcycle or all-terrain vehicle dealer, or recreational vehicle dealer.

Acts 2005, No. 500, §1, eff. July 12, 2005; Acts 2009, No. 403, §1, eff. July 7, 2009; Acts 2010, No. 1036, §1, eff. August 15, 2010; Acts 2012, No. 326, §1, eff. August 1, 2012; Acts 2012, No. 150, §1, eff. August 1, 2012.

§1268.1. Repealed.

Acts 2012, No. 326, §2, eff. August 1, 2012.

§1268.2. Manufacturer termination of line-make; manufacturer bankruptcy; license

Notwithstanding the terms of any franchise or other provision of law, if the termination, cancellation,

or nonrenewal of a licensee's franchise is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, whether by bankruptcy or otherwise, the license issued by the commission may remain in effect at the discretion of the commission pursuant to its rules.

Acts 2009, No. 403, §1, eff. July 7, 2009.

§1269. Venue and choice of law for litigation or arbitration

A provision contained in a franchise agreement requiring that arbitration or litigation be conducted outside this state or a provision that seeks to apply any law other than Louisiana law to disputes between the parties to a franchise agreement, is void and unenforceable.

Acts 2005, No. 500, §1, eff. July 12, 2005.

PART II. PROVISIONS SPECIFIC TO MARINE PRODUCTS

§1270. Establishment of new marine dealerships or relocations; protests; procedure

A. Whenever the commission receives an application for a recreational products dealer's license that would add a new marine dealership, it shall first notify the existing licensed marine dealership or dealerships selling the same-line makes, models, or classifications if the new dealership's proposed location is within the existing dealer's area of responsibility. Any same-line makes, models, or classifications dealership whose area of responsibility includes the location of the proposed new marine dealership may object to the granting of the license.

B. Whenever the commission receives an application for a recreational products dealer's license which would relocate an existing marine dealership, it shall first notify the existing licensed marine dealership or dealerships selling the same-line makes, models, or classifications if the dealership's proposed new location is within the existing dealer's area of responsibility. The existing same-line makes, models, or classifications dealership or dealerships shall have the right to object to the granting of the license only if the proposed relocation is within a radius of seven miles of its facility. However, without regard to distance, whenever the commission receives an application for the relocation of a marine dealership which would add an additional marine dealership to an existing same-line makes, models, or classifications dealership's area of responsibility, the affected dealership shall have the right to object.

C. The objection shall be in writing and shall be received by the commission within a fifteen-day period after receipt of the notice. The fifteen-day objection period shall be waived upon written notification to the commission from all licensees entitled to object that the licensees have no objections to the proposed change or addition for which 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 and issue its decision within ninety days after date of the hearing. Notice of hearing and an opportunity to participate therein shall be given to the manufacturer or distributor, the applicant for the license as a marine dealer, and to the protesting dealership or dealerships.

D. Whenever the commission receives an objection pursuant to the provisions of Subsection A of this Section, or whenever the commission receives an objection pursuant to the assignment of the marine dealer's area of principal sales and service responsibility, the commission shall consider the following and may consider any other relevant factors in determining whether there is good cause to approve or reject the assignment of the marine dealer's area of principal sales and service responsibility, or to issue a license:

(1) Whether the community or territory can support an additional marine dealership.

(2) The financial impact on both the applicant and the existing marine dealership or dealerships.

(3) Whether the existing marine dealerships of the same-line makes, models, or classifications

in the dealership's area of responsibility are providing adequate representation, competition, and convenient consumer care for the marine products of the same-line makes, models, or classifications located within that area.

(4) Whether the issuance of the license would increase competition, be in the public interest, or both.

E. In disputes between the marine dealers and manufacturers and distributors regarding the execution of an agreement that would add a new same-line make marine dealership or would add the same product line regardless of brand name within the area of responsibility of an existing marine dealer, the name brand of the boat determines whether a dealer may enter into a franchise for a particular boat package or boat package line. The marine motor, marine engine, boat trailer, or any accessory made a part of a boat package shall not be the subject of, or a consideration in, an area of responsibility dispute for violation involving the boat package.

F. A manufacturer or distributor of a marine motor or marine engine may, in its discretion, enter into a warranty service agreement with a marine dealer of a boat package that is packaged with its particular brand marine motor or engine without violating the area of responsibility of any other marine dealer that has a franchise of that brand marine motor or engine. However, the warranty service agreement shall not be construed to permit the marine dealer to sell the marine motor or engine separate from the boat package, and the marine dealer shall not hold itself out to be a full-line or loose marine motor or engine dealership.

Acts 2012, No. 326, §1. eff. August 1, 2012.

§1270.1. Unauthorized acts; marine products

It shall be a violation of this Part:

(1) For a manufacturer, a distributor, a wholesaler, distributor branch, or factory branch of marine products or any officer, agent, or other representative thereof:

(a) To induce or coerce, or attempt to induce or coerce, any licensee.

(i) To order or accept delivery of any marine product, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered.

(ii) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(iii) To assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by law, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation involving a manufacturer, distributor, wholesaler, distributor branch or factory branch, or officer, agent, or other representative thereof.

(iv) To enter into a franchise with a licensee or during the franchise term, use any written instrument, agreement, release, assignment, novation, estoppel, or waiver, to attempt to nullify or modify any provision of this Chapter, or to require any controversy between a marine dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted courts of this state or the United States, if such referral would be binding upon the dealer. Such instruments are null and void, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation.

(v) To waive the right to a jury trial.

(vi) To participate in an advertising group or to participate monetarily in an advertising campaign or contest or to purchase any promotional materials, showroom, or other display decorations or materials at the expense of such marine dealer.

(vii) To adhere to performance standards that are not applied uniformly to other similarly situated marine dealers. Any such performance standards shall be fair, reasonable, equitable, and based on accurate information. If marine dealership performance standards are based on a survey, the manufacturer, distributor, wholesaler, distributor branch, or factory branch shall establish the objectivity of the survey process and provide this information to any marine dealer of the same-line make covered by the survey request. Each response to a survey used by a manufacturer in preparing an evaluation or performance-rating of a marine dealer shall be made available to that marine dealer, or it cannot be used by the manufacturer. However, if a customer requests that the manufacturer or distributor not disclose the consumer's identity to the dealer, the manufacturer may withhold the consumer's identity in providing the survey response to the dealer, and the manufacturer may use the response. Any survey used must have the following characteristics:

(aa) It was designed by experts.

(bb) The proper universe was examined.

(cc) A representative sample was chosen.

(dd) The data was accurately reported.

(viii) To release, convey, or otherwise provide customer information, if to do so is unlawful or if the customer objects in writing. This does not include information that is necessary for the manufacturer to meet its obligations to the marine dealer or consumers in regard to contractual responsibilities, marine product recalls, or other requirements imposed by state or federal law. The manufacturer is further prohibited from providing any consumer information received from the marine dealer to any unaffiliated third party.

(ix) To pay the attorney fees of the manufacturer or distributor related to hearings and appeals brought under this Chapter.

(x) To order or accept delivery of any vehicle with special features, appliances, accessories, or equipment not included in the list price of the vehicle as publicly advertised.

(b) To refuse to deliver to any licensee having a franchise or contractual arrangement for the retail sale of marine products sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or factory branch, any marine product, publicly advertised for immediate delivery, within sixty days after such marine dealer's order shall have been received.

(c) To threaten to cancel any franchise existing between such manufacturer, distributor, wholesaler, distributor branch or factory branch and the marine dealer for any reason.

(d) To unfairly, without just cause and due regard to the equities of the marine dealer, cancel the franchise of the licensee. The nonrenewal of a franchise with a marine dealer or his successor without just provocation or cause, or the refusal to approve a qualified transferee or qualified successor to the dealer-operator as provided for in the selling agreement, shall be deemed a violation of this Subparagraph and shall constitute an unfair cancellation, regardless of the terms or provisions of such franchise. However, at least ninety days notice shall be given to the dealer of a cancellation or nonrenewal of a franchise except for a cancellation arising out of fraudulent activity of the dealer principal which results in the conviction of a crime punishable by imprisonment.

(e) To refuse to extend to a licensee the privilege of determining the mode or manner of available transportation facility that such marine dealer desires to be used or employed in making deliveries of marine products to him or it.

(f) To ship or sell marine products to a licensee prior to the licensee having been granted a license by the commission to sell such products.

(g) To unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified transferee capable of being licensed as a marine dealer in this state, provided the transferee meets

the criteria generally applied by the manufacturer in approving new marine dealers and agrees to be bound by all the terms and conditions of the standard franchises.

(h) To fail to respond in writing to a written request for consent as specified in Subparagraph (g) of this Paragraph within sixty days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for such purposes and containing the information required therein. Failure to respond shall be deemed to be consent to the request.

(i)(i) To sell or offer to sell a new or unused marine product directly to a consumer except as provided in this Chapter, or to compete with a licensee in the same-line makes, models, or classifications operating under an agreement from the aforementioned manufacturer. A manufacturer shall not, however, be deemed to be competing when any one of the following conditions are met:

(aa) Operating a marine dealership temporarily for a reasonable period, not to exceed two years.

(bb) Operating a bona fide retail marine dealership that is for sale to any qualified independent person at a fair and reasonable price, not to exceed two years.

(cc) Operating in a bona fide relationship in which a person independent of a manufacturer has made a significant investment subject to loss in the marine dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

(ii) After any of the conditions have been met under Subitems (i)(aa) and (bb) of this Subparagraph, the commission shall allow the manufacturer to compete with licensees of the same-line makes, models, or classifications under an agreement from the manufacturer for longer than two years when, in the discretion of the commission, the best interest of the manufacturer, consuming public, and licensees are best served.

(j) To fail to compensate its marine dealers for the work and services they are required to perform in connection with the marine dealer's delivery and preparation obligations according to the terms of compensation that shall be filed with the commission on or before October first of each year. The commission shall find the compensation to be reasonable or the manufacturer shall remedy any deficiencies.

(k) To fail to designate and provide to the commission in writing the community or territory assigned to a licensee.

(l) To unreasonably discriminate among competing, similarly situated, same-line make dealers in the sales of the marine products, in the availability of such marine products, in the terms of incentive programs or sales promotion plans, or in other similar programs.

(m) To use any subsidiary, affiliate, or any other controlled person or entity, or to employ the services of a third party, to accomplish what would otherwise be illegal conduct under this Chapter on the part of the manufacturer or distributor.

(n) To make a change in the area of responsibility described in the franchise or sales and service agreement of a dealer, without the manufacturer or distributor giving the marine dealer and the commission no less than sixty days prior written notice by certified or registered mail.

(2) For a marine dealer, used marine product dealer, marine product salesman:

(a) To require a purchaser of a marine product, as a condition of sale and delivery thereof, to also purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; however, this prohibition shall not apply as to special features, appliances, accessories, or equipment which are permanently affixed to the marine product.

(b) To represent and sell as a new marine product any marine product, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(c) To use any false or misleading advertisement in connection with his business as such marine dealer or marine product salesman.

(d) To sell or offer to sell makes, models, or classifications of new marine products for which no franchise and license to sell is held.

(e) Except as otherwise approved by the commission, to sell or offer to sell a marine product from an unlicensed location.

(f) To deliver to a prospective purchaser a new or a used marine product on a sale conditioned on financing, i.e., a spot delivery, except on the following terms and conditions which shall be in writing and shall be a part of the conditional sales contract or other written notification signed by the purchaser:

(i) That if the sale is not concluded by the financing of the sale to the purchaser within twenty-five days of the delivery, the sale contract shall be null and void.

(ii) That the marine product being offered for trade-in by the purchaser shall not be sold by the marine dealer until the conditional sale is complete.

(iii) That there shall be no charge to the purchaser should the conditional sale not be completed, including but not limited to mileage charges or charges to refurbish the marine product offered for trade-in. However, the purchaser shall be responsible for any and all damages to the marine product or other marine products damaged by the fault of the purchaser and any and all liability incurred by the purchaser during the purchaser's custody of the marine product to the extent provided for in R.S. 22:1296.

(iv) That if the conditional sale is not completed, the marine dealer shall immediately refund to the purchaser upon return of the marine product all sums placed with the dealership as a deposit or any other purpose associated with the attempted sale of the marine product.

(v) That the prospective purchaser shall return the marine product to the dealership within forty-eight hours of notification by the marine dealer that the conditional sale will not be completed. If the prospective purchaser does not return the marine product to the dealership within forty-eight hours of notification by the marine dealer, an authorized agent of the marine dealer shall have the right to recover the marine product without the necessity of judicial process, provided that such recovery can be accomplished without unauthorized entry into a closed dwelling, whether locked or unlocked and without a breach of peace.

(g) To pay a fee to any person in return for the solicitation, procurement, or production by that person of prospective purchasers for new and used marine products, except to a salesman licensed under the provisions of this Chapter.

(h) To fail to fully and completely explain each charge listed on a retail buyer's order or marine product invoice prior to the purchase of a marine product.

(i) When selling a marine product to a consumer, to assess any consumer services fees, which shall include fees for treating the interior upholstery of the marine product, oil changes, roadside assistance, dealer inspections, or any other service offered by the dealer, without allowing the buyer to refuse such services and be exempt from payment for such services. The provisions of this Subparagraph shall not apply to dealer-added options or accessories which are permanently affixed to the marine product.

(3)(a) For any person or other licensee to modify a franchise during the term of the agreement or upon its renewal if the modification substantially and adversely affects the dealer's rights, obligations, investment, or return on investment without giving a 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.

(b) In making a determination of whether there is good cause for permitting a proposed modification, the commission may consider any relevant factor including:

(i) The reasons for the proposed modification.

(ii) Whether the proposed modification is applied to or affects all licensees in a nondiscriminating manner.

(iii) The degree to which the proposed modification will have a substantial and adverse effect upon the licensee's investment or return on investment.

(iv) Whether the proposed modification is in the public interest.

(v) The degree to which the proposed modification is necessary to the orderly and profitable distribution of marine products and other services by the licensee.

(vi) Whether the proposed modification is offset by other modifications beneficial to the licensee.

(c) The decision of the commission shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed modification. The commission shall deliver copies of the decision to the parties personally or by registered mail.

(4) For any employee of a licensee while acting in the scope of his employment, to accept any payment, commission, fee, or compensation of any kind from any person other than the employing licensee, unless such payment is fully disclosed to and approved by the employing licensee.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.2. Warranty; compensation; audits of marine dealer records

A.(1) It shall be a violation of this Chapter for a manufacturer, distributor, wholesaler, distributor branch, or factory branch of marine products or any officer, agent or other representative thereof to fail to adequately and fairly compensate its marine dealer for labor, parts, and other expenses incurred by such dealer to perform under and comply with a manufacturer's or a distributor's warranty agreement.

(2) In no event shall any manufacturer or distributor pay its marine dealer at a price or rate for warranty work that is less than that charged by the marine dealer to the retail customers of the marine dealer for nonwarranty work of like kind.

(3) Warranty work includes parts and labor performed.

(4) All claims made by the marine dealer for compensation under this Subsection shall be paid within thirty days after approval and shall be approved or denied within thirty days after receipt. When any

claim is denied, the marine dealer shall be notified in writing of the grounds for denial.

(5) The obligations set forth in this Subsection may be modified by contract.

B.(1) Notwithstanding the terms of any franchise, warranty and sales, incentive, audits of marine 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 marine dealer shall not be held liable by virtue of an audit for failure to retain parts for a period in excess of six months. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall be only for the twelve-month period immediately following the date of the final payment to the marine dealer under a promotion, event, program, or activity. In no event shall the manufacturer, distributor, distributor branch, or factory branch fail to allow the marine dealer to make corrections to the sales data in less than one hundred twenty days from the program period. Additionally, no penalty other than amounts advanced on a marine product reported incorrectly shall be due in connection with the audit. With respect to marine products sold during the time period subject to the audit, but submitted incorrectly to the manufacturer, distributor, or wholesale distributor branch or factory branch, the marine dealer shall be charged back for the amount reported incorrectly and credited with the amount due, if anything, on the actual sale date.

(2) No claim which has been approved and paid may be charged back to the marine dealer unless it can be shown that one of the following applies:

(a) The claim was false or fraudulent.

(b) The repairs were not properly made.

(c) The repairs were unnecessary to correct the defective condition under generally accepted standards of workmanship.

(d) The marine dealer failed to reasonably substantiate the repair in accordance with reasonable written requirements of the manufacturer or distributor, if the marine dealer was notified of the requirements prior to the time the claim arose and if the requirements were in effect at the time the claim arose.

(3) A manufacturer or distributor shall not deny a claim solely based on a marine dealer's incidental failure to comply with a specific claim processing requirement, or a clerical error, or other administrative technicality.

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

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

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

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.3. Sale of water-damaged marine products

A. No person shall sell, transfer, or convey any new or used marine product to any person without notifying the buyer or receiver of the marine product in writing of the extent of any water damage from flooding which occurred to the marine product prior to the transaction.

B. If a sale, transfer, or conveyance of a new or used marine product occurs in violation of Subsection A of this Section, the person receiving ownership and title to the marine product who is not otherwise aware of the damage at the time of the transaction may bring an action to set aside the transaction within one year from the date of the transaction and receive all monies or other property given as consideration for the marine product less a reasonable assessment for wear and tear.

C. For the purposes of this Section, a "water-damaged marine product" means any marine product whose power train, computer, or electrical system has been damaged by flooding.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.4. Succession; right of first refusal; marine dealers

A. The terms of the franchise notwithstanding, any marine dealer may appoint by will, or other written instrument, a designated successor to succeed in the ownership interest of the marine dealer in the marine dealership upon the death or incapacity of the marine dealer.

B. Unless good cause exists for refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased or incapacitated marine dealer of a marine dealership may succeed to the ownership of the marine dealership under the existing franchise if:

(1) The designated successor gives the manufacturer or distributor written notice of his intention to succeed to the ownership of the marine dealer within sixty days of the marine dealer's death or incapacity.

(2) The designated successor agrees to be bound by all the terms and conditions of the franchise.

C. The manufacturer or distributor may request, and the designated successor shall provide, promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

D. If a manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated marine dealer, the manufacturer or distributor may, not more than sixty days following receipt of notice of the designated successor's intent to succeed and receipt of such personal or financial data, serve upon the designated successor notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the marine dealer not earlier than six months from the date such notice is served.

E. The notice must state the specific grounds for the refusal to honor the succession.

F. If notice of refusal and discontinuance is not timely served upon the designated successor, the franchise shall continue in effect subject to termination only as otherwise permitted by this Part.

G. In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards as a marine dealer.

H. If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated owner for good cause, then and in such event the manufacturer or distributor shall allow the designated successor a reasonable period of time which shall not be less than six months in which to consummate a sale of the marine dealership. Any such sale shall be subject to R.S. 32:1270.1(2)(d).

Acts 2012, No. 326, §1, eff. August 1, 2012.

§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 franchise unless there is a breach of the franchise by the marine dealer and until ninety days after notice of such 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 marine dealer has failed to correct the breach within such period.

B. If the franchise is terminated as a result of any action by the marine dealer and the manufacturer, distributor, or wholesaler has not given due cause, as provided in this Section, for termination of such franchise, the manufacturer, distributor, or wholesaler shall not be required to repurchase the inventory as provided in this Section; however, if the franchise is terminated as a result of any action by the marine dealer and the manufacturer, distributor, or wholesaler has given the marine dealer due cause, as provided in this Section, to terminate the franchise, the manufacturer, distributor, or wholesaler shall be required to repurchase that inventory previously purchased from them, including any new and unused marine products of the current and immediate prior model or program year and new and unused parts inventory as provided in this Section.

C. 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.

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 one of the so named:

(1) Has made a material misrepresentation in accepting or acting under the franchise.

(2) Has engaged in an unfair business practice.

(3) Has engaged in conduct which is injurious or detrimental to public welfare.

(4) Has failed to comply with any applicable Section of this Chapter.

(5) Has been convicted of a crime, the effect of which would be detrimental to the marine dealership or dealer.

(6) Has violated the Louisiana marine dealers area of responsibility.

(7) Has failed to operate in the normal course of business for thirty consecutive days.

(8) Has failed to comply with the terms of the franchise with the marine dealer.

(9) Has materially misrepresented the performance or fitness for sale or use of a product line or products covered by the franchise.

E. If a manufacturer, distributor, or wholesaler does not intend to renew a franchise, the manufacturer, distributor, or wholesaler shall give the marine dealer ninety days written notice prior to the effective date by certified mail, return receipt requested, or commercial delivery service with verification of receipt.

F. As required by this Section, the manufacturer, distributor, or wholesaler shall repurchase the inventory which can be verified as previously purchased from them, including all new and unused marine products of the current and immediate prior model or program year and new and unused parts on hand and held by the marine dealer on the date of termination of the contract. The manufacturer, distributor, or wholesaler shall pay an amount equivalent to the cost actually paid by the marine dealer, including discounts given and rebates paid per unit for any new, unused, undamaged, and unaltered from original invoice and delivery, and complete marine product. The manufacturer, distributor, or wholesaler shall also pay an amount equal to the price paid by the marine dealer for any new, unused, and undamaged repair parts and accessories which are listed in the manufacturer's, distributor's, or wholesaler's prevailing parts list or were delivered in the past forty-eight months and are in their original packaging.

G. The provisions of this Section shall not require the repurchase from a marine dealer of:

(1) Any repair part which has a limited storage life or is otherwise subject to deterioration.

(2) Any single repair part which is priced and packaged as a set of two or more items.

(3) Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning.

(4) Any inventory for which the marine dealer cannot provide good title, free and clear of all claims, liens, and encumbrances.

(5) Any inventory which the marine dealer desires to keep, provided that the marine dealer has a contractual right to do so.

(6) Any marine product which is not in new, unused, undamaged, and complete condition.

(7) Any repair parts which are not in new, unused, and undamaged condition.

(8) Any inventory which was ordered by the marine dealer on or after the date of receipt of the notification of termination of the franchise.

(9) Any inventory which was acquired by the marine dealer from any source other than the manufacturer, distributor, or wholesaler, or its immediate predecessor.

(10) Any marine product that has been altered substantially from original delivery.

H. Upon termination of the franchise, the marine dealer shall submit a final inventory of marine products and parts on hand to the manufacturer, distributor, or wholesaler by certified mail, return receipt

requested, or commercial delivery service with verification of receipt. If a manufacturer, distributor, or wholesaler fails or refuses to repurchase as required by this Section within thirty days of the receipt of the inventory, without just cause, the manufacturer, distributor, or wholesaler shall be subjected to a penalty of the marine dealer's reasonable attorney fees, court costs, and interest on the inventory value of returnable marine products and parts required to be purchased computed at the rate of one and one-half percent per month from the thirty-first day, as long as such repurchase is not made.

I. Notwithstanding any other provision of law to the contrary, it shall be unlawful for a manufacturer, distributor, or wholesaler, either by contract or practice, to assess repurchase or restocking charges, freight charges except for return charges, reimbursement of interest charges paid, and any similar charges to the marine dealer.

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, 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.

K. In the event of the death or incapacity of the marine dealer or the majority owner of a person operating as a marine dealer, the manufacturer, distributor, or wholesaler shall, at the option of the heirs, if the marine dealer died intestate, or the legatees or transferees under the terms of the deceased marine dealer's last will and testament if the marine dealer died testate, repurchase the inventory from the heirs, legatees, or transferees as if the manufacturer, distributor, or wholesaler had terminated the contract, and the inventory repurchase provisions of this Section shall apply. The heirs or legatees shall have until the end of the contract term or one year from the date of the death of the marine dealer or majority owner of a person, whichever comes first, to exercise their option pursuant to this Section. However, nothing in this Section shall require the repurchase of inventory if the heirs, legatees, or transferees and the manufacturer, distributor, or wholesaler enter into a new franchise to operate the marine dealership.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.6. Manufacturer termination of line-make; manufacturer bankruptcy; license

Notwithstanding the terms of any franchise or provision of law, if the termination, cancellation, or nonrenewal of a licensee's selling agreement is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, whether by bankruptcy or otherwise, the license issued by the commission may remain in effect at the discretion of the commission pursuant to its rules.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.7. Indemnification of marine dealers

Notwithstanding the terms of any franchise agreement, each manufacturer or converter shall indemnify and hold harmless its franchised marine dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the marine dealer, arising out of complaints, claims, or lawsuits including but not limited to strict liability, negligence, misrepresentation, express or implied warranty, or rescission of sale to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly, or design of marine products, parts, or accessories, or other functions by the manufacturer or converter, which are beyond the control of the marine dealer.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.8. Marine products repairs

Suppliers of mechanical repairs and services for any marine product subject to regulation pursuant to this Part shall provide each consumer with an itemized bill indicating repairs and services performed, parts replaced, or materials used, the total labor charge, and the identity of the mechanic, repairman, or supplier who performed the work. However, nothing in this Section shall prohibit a supplier of mechanical repairs and services from charging a service fee for the use of shop supplies such as rags, fender covers, small amounts of fluid, or other items which are not itemized, provided that such fee does not exceed five percent of the total invoice for mechanical repairs or thirty-five dollars, whichever is less.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.9. Damage disclosure

A. Whenever a new marine product 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 marine product has sustained that exceeds six percent of the manufacturer's suggested retail price. Such 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. This Section shall apply to all instances of vehicular body or mechanical damage to marine products 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.

Acts 2012, No. 326, §1, eff. August 1, 2012.

PART III. PROVISIONS SPECIFIC TO MOTORCYCLES AND ALL-TERRAIN VEHICLES

§1270.10. Establishment of new motorcycle or all-terrain vehicle dealerships or relocations; protests; procedure

A. Whenever the commission receives an application for a recreational products dealer's license which would add a new motorcycle or all-terrain vehicle dealership, it shall first notify the existing licensed motorcycle or all-terrain vehicle dealership or dealerships selling the same-line makes, models, or classifications **within a thirty-mile radius of the proposed dealership, and such dealer or dealers** may object to the granting of the license.

B. Whenever the commission receives an application for a recreation products dealer's license which would relocate an existing motorcycle or all-terrain vehicle dealership, it shall first notify any existing licensed motorcycle or all-terrain vehicle dealership selling the same-line makes, models, or classifications **within a thirty-mile radius of the proposed dealership, and such dealer or dealers.** Any existing same-line makes, models, or classifications dealership shall have the right to object to the granting of the license only if the proposed relocation is within a radius of seven miles of its facility. However, without regard to distance, whenever the commission receives an application for the relocation of a motorcycle or all-terrain vehicle dealership which would add an additional franchise to an existing same-line makes, models, or classifications dealership's area of responsibility, the affected motorcycle or all-terrain vehicle dealership shall have the right to object.

C. The objection shall be in writing and shall be received by the commission within a fifteen-day period after receipt of the notice. The fifteen-day objection period shall be waived upon written notification to the

commission from all licensees entitled to object that the licensees have no objections to the proposed change or addition for which the notice of intent was issued. If a 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 and issue its decision within ninety days after date of the hearing. Notice of hearing and an opportunity to participate therein shall be given to the manufacturer or distributor, the applicant for the license as a motorcycle or all-terrain vehicle dealer, and to the protesting motorcycle or all-terrain vehicle dealership or dealerships.

D. Whenever the commission receives an objection pursuant to the provisions of Subsection A of this Section, the commission shall consider the following and may consider any other relevant factors in determining whether there is good cause to issue a license:

(1) Whether the community or territory can support an additional motorcycle or all-terrain vehicle dealership.

(2) The financial impact on both the applicant and the existing motorcycle or all-terrain vehicle dealership or dealerships.

(3) Whether the existing motorcycle or all-terrain vehicle dealerships of the same-line makes, models, or classifications in the dealership's area of responsibility are providing adequate representation, competition, and convenient consumer care for the motorcycle or all-terrain vehicles of the same-line makes, models, or classifications located within that area.

(4) Whether the issuance of the license would increase competition, or be in the public interest, or both.

Acts 2012, No. 326, §1, eff. August 1, 2012, **Acts 2013, No. 53, § , eff. August 1, 2013.**

§1270.11. Unauthorized acts

It shall be a violation of this Part:

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

(a) To induce or coerce, or attempt to induce or coerce, any licensee:

(i) To order or accept delivery of any motorcycle or all-terrain vehicle, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered.

(ii) To order or accept delivery of any motorcycle or all-terrain vehicle with special features, appliances, accessories, or equipment not included in the list price of the vehicle as publicly advertised.

(iii) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(iv) To assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by law, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation between a manufacturer, distributor, wholesaler, distributor branch or factory branch, or officer, agent, or other representative thereof.

(v) To enter into a franchise with a licensee or during the franchise term, use any written instrument, agreement, release, assignment, novation, estoppel, or waiver, to attempt to nullify or modify any provision of this Chapter, or to require any controversy between a dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted courts of this state or the United States, if such referral would be binding upon the motorcycle or all-terrain vehicle dealer. Such instruments are null and void, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation.

(vi) To waive the right to a jury trial.

(vii) To release, convey, or otherwise provide customer information, if to do so is unlawful or if the customer objects in writing. This does not include information that is necessary for the manufacturer to meet its obligations to the motorcycle or all-terrain vehicle dealer or consumers in regard to contractual responsibilities, motorcycle or all-terrain vehicle recalls, or other requirements imposed by state or federal law. The manufacturer is further prohibited from providing any consumer information received from the motorcycle or all-terrain vehicle dealer to any unaffiliated third party.

(viii) To pay the attorney fees of the manufacturer or distributor related to hearings and appeals brought under this Chapter.

(b) To threaten to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or factory branch and the motorcycle or all-terrain vehicle dealer for any reason.

(c) To unfairly, without just cause and due regard to the equities of the motorcycle or all-terrain vehicle dealer, cancel the franchise of the licensee. The nonrenewal of a franchise with such dealer or his successor without just provocation or cause, or the refusal to approve a qualified transferee or qualified successor to the dealer-operator as provided for in the franchise shall be deemed a violation of this Subparagraph and shall constitute an unfair cancellation, regardless of the terms or provisions of such franchise. However, at least ninety days notice shall be given to the dealer of a cancellation or nonrenewal of franchise except for a cancellation arising out of fraudulent activity of the dealer principal which results in the conviction of a crime punishable by imprisonment.

(d) To refuse to extend to a licensee the privilege of determining the mode or manner of available transportation facility that the motorcycle or all-terrain vehicle dealer desires to be used or employed in making deliveries of motorcycles or all-terrain vehicles to him or it.

(e) To ship or sell motorcycles or all-terrain vehicles to a licensee prior to the licensee having been granted a license by the commission to sell motorcycles or all-terrain vehicles.

(f) To unreasonably withhold consent to the sale, transfer, or exchange of the franchise to a qualified transferee capable of being licensed as a motorcycle or all-terrain vehicle dealer in this state, provided the transferee meets the criteria generally applied by the manufacturer in approving new motorcycle or all-terrain vehicle dealers and agrees to be bound by all the terms and conditions of the standard franchises.

(g) To fail to respond in writing to a written request for consent as specified in Subparagraph (f) of this Paragraph within sixty days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for such purposes and containing the information required therein. Failure to respond shall be deemed to be consent to the request.

(h)(i) To sell or offer to sell a new or unused motorcycle or all-terrain vehicle directly to a consumer except as provided in this Chapter, or to compete with a licensee in the same-line makes, models, or

classifications operating under an agreement or franchise from the aforementioned manufacturer. A manufacturer shall not, however, be deemed to be competing when any one of the following conditions are met:

(aa) Operating a motorcycle or all-terrain vehicle dealership temporarily for a reasonable period, not to exceed two years.

(bb) Operating a bona fide retail dealership which is for sale to any qualified independent person at a fair and reasonable price, not to exceed two years.

(cc) Operating in a bona fide relationship in which a person independent of a manufacturer has made a significant investment subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

(ii) After any of the conditions have been met under Subitems (i)(aa) and (bb) of this Subparagraph, the commission shall allow the manufacturer to compete with licensees of the same-line makes, models, or classifications under an agreement or franchise from the manufacturer for longer than two years when, in the discretion of the commission, the best interest of the manufacturer, consuming public, and licensees are best served.

(i) To fail to compensate its motorcycle or all-terrain vehicle dealers for the work and services they are required to perform in connection with the motorcycle or all-terrain vehicle dealer's delivery and preparation obligations according to the terms of compensation that shall be filed with the commission on or before October first of each year. The commission shall find the compensation to be reasonable or the manufacturer shall remedy any deficiencies.

(j) To fail to designate and provide to the commission in writing the community or territory assigned to a licensee.

(k) To unreasonably discriminate among competing, similarly situated, same-line make dealers in the sales of motorcycles or all-terrain vehicles, in the availability of motorcycles or all-terrain vehicles, in the terms of incentive programs or sales promotion plans, or in other similar programs.

(l) To use any subsidiary, affiliate, or any other controlled person or entity, or to employ the services of a third party, to accomplish what would otherwise be illegal conduct under this Chapter on the part of the manufacturer or distributor.

(m) To make a change in the area of responsibility described in the franchise agreement or sales and service agreement of a motorcycle or all-terrain vehicle dealer, without the franchisor, converter, or manufacturer giving the motorcycle or all-terrain vehicle dealer and the commission no less than sixty days prior written notice by certified or registered mail.

(n) To refuse to deliver to any licensee having a franchise or contractual arrangement for the retail sale of motorcycles or all-terrain vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or factory branch, any motorcycle or all-terrain vehicle, publicly advertised for immediate delivery, within sixty days after such dealer's order shall have been received.

(2) For a motorcycle or all-terrain vehicle dealer, used motorcycle or all-terrain vehicle dealer, or a motorcycle or all-terrain vehicle salesman:

(a) To require a purchaser of a motorcycle or all-terrain vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, accessories, or equipment not desired or requested

by the purchaser; however, this prohibition shall not apply as to special features, appliances, accessories, or equipment which are permanently affixed to the motorcycle or all-terrain vehicle.

(b) To represent and sell as a new motorcycle or all-terrain vehicle any motorcycle or all-terrain vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(c) To use any false or misleading advertisement in connection with his business as a motorcycle or all-terrain vehicle dealer or motorcycle or all-terrain vehicle salesman.

(d) To sell or offer to sell makes, models, or classifications of new motorcycles or all-terrain vehicles for which no franchise and license to sell is held.

(e) Except as otherwise approved by the commission, to sell or offer to sell a motorcycle or all-terrain vehicle from an unlicensed location.

(f) To deliver to a prospective purchaser a new or a used motorcycle or all-terrain vehicle on a sale conditioned on financing, i.e., a spot delivery, except on the following terms and conditions which shall be in writing and shall be a part of the conditional sales contract or other written notification signed by the purchaser:

(i) That if the sale is not concluded by the financing of the sale to the purchaser within twenty-five days of the delivery, the sale contract shall be null and void.

(ii) That the motorcycle or all-terrain vehicle being offered for trade-in by the purchaser shall not be sold by the motorcycle or all-terrain vehicle dealer until the conditional sale is complete.

(iii) That there shall be no charge to the purchaser should the conditional sale not be completed, including but not limited to mileage charges or charges to refurbish the motorcycle or all-terrain vehicle offered for trade-in. However, the purchaser shall be responsible for any and all damages to the motorcycle or all-terrain vehicle or other motorcycles or all-terrain vehicles damaged by the fault of the purchaser and any and all liability incurred by the purchaser during the purchaser's custody of the vehicle to the extent provided for in R.S. 22:1296.

(iv) That if the conditional sale is not completed, the motorcycle or all-terrain vehicle dealer shall immediately refund to the purchaser upon return of the motorcycle or all-terrain vehicle all sums placed with the dealership as a deposit or any other purpose associated with the attempted sale of the motorcycle or all-terrain vehicle.

(v) That the purchaser shall return the motorcycle or all-terrain vehicle to the dealership within forty-eight hours of notification by the dealer that the conditional sale will not be completed. If the prospective purchaser does not return the motorcycle or all-terrain vehicle to the dealership within forty-eight hours of notification by the motorcycle or all-terrain vehicle dealer, an authorized agent of the motorcycle or all-terrain vehicle dealer shall have the right to recover the motorcycle or all-terrain vehicle without the necessity of judicial process, provided that such recovery can be accomplished without unauthorized entry into a closed dwelling, whether locked or unlocked and without a breach of peace.

(g) To pay a fee to any person in return for the solicitation, procurement, or production by that person of prospective purchasers for new and used motorcycles or all-terrain vehicles, except to a motorcycle or all-terrain vehicle salesman licensed under the provisions of this Chapter.

(h) To fail to fully and completely explain each charge listed on a retail buyer's order or motorcycle or all-terrain vehicle invoice prior to the purchase of a motorcycle or all-terrain vehicle.

(i) When selling a motorcycle or all-terrain vehicle to a consumer, to assess any consumer services fees, which shall include fees for treating the interior upholstery of the vehicle, oil changes, roadside assistance, dealer inspections, or any other service offered by the dealer, without allowing the buyer to refuse such services and be exempt from payment for such services. The provisions of this Subparagraph shall not apply to dealer-added options or accessories which are permanently affixed to the motorcycle or all-terrain vehicle.

(j) (i) To fail to disclose to a purchaser in writing on the sales contract, buyer's order, or any other document that the motorcycle or all-terrain vehicle dealer may be participating in finance charges associated with the sale.

(ii) To participate in a finance charge that would result in a difference between the buy rate and the contract rate of more than three percentage points.

(iii) The provisions of this Subparagraph shall apply only to transactions subject to the Louisiana Motor Vehicle Sales Finance Act.

(3) (a) For any person or other licensee 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 a 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 of 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.

(b) In making a determination of whether there is good cause for permitting a proposed modification, the commission may consider any relevant factor including:

(i) The reasons for the proposed modification.

(ii) Whether the proposed modification is applied to or affects all licensees in a nondiscriminating manner.

(iii) The degree to which the proposed modification will have a substantial and adverse effect upon the licensee's investment or return on investment.

(iv) Whether the proposed modification is in the public interest.

(v) The degree to which the proposed modification is necessary to the orderly and profitable distribution of vehicles and other services by the licensee.

(vi) Whether the proposed modification is offset by other modifications beneficial to the licensee.

(c) The decision of the commission shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed modification. The commission shall deliver copies of the decision to the parties personally or by registered mail.

(4) For any employee of a licensee while acting in the scope of his employment, to accept any payment, commission, fee, or compensation of any kind from any person other than the employing licensee, unless such payment is fully disclosed to and approved by the employing licensee.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.12. Indemnification of motorcycle and all-terrain vehicle franchised dealers

Notwithstanding the terms of any franchise agreement, each manufacturer or converter shall indemnify and hold harmless its franchised motorcycle or all-terrain vehicle dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the motorcycle or all-terrain vehicle dealer, arising out of complaints, claims, or lawsuits including but not limited to strict liability, negligence, misrepresentation, express or implied warranty, or rescission of sale to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly, or design of motorcycles or all-terrain vehicles, parts, or accessories, or other functions by the manufacturer or converter, which are beyond the control of the motorcycle or all-terrain vehicle dealer.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.13. Warranty; compensation; audits of motorcycle or all-terrain vehicle dealer records

A.(1) It shall be a violation of this Chapter for a manufacturer, a distributor, a wholesaler, distributor branch or factory branch of motorcycles or all-terrain vehicles, or officer, agent, or other representative thereof to fail to adequately and fairly compensate its motorcycle or all-terrain vehicle dealers for labor, parts, and other expenses incurred by such motorcycle or all-terrain vehicle dealer to perform under and comply with a manufacturer's or a distributor's warranty agreement.

(2) In no event shall any manufacturer or distributor pay its motorcycle or all-terrain vehicle dealers at a price or rate for warranty work that is less than that charged by the motorcycle or all-terrain vehicle dealer to the retail customers of the motorcycle or all-terrain vehicle dealer for nonwarranty work of like kind.

(3) Warranty work includes parts and labor performed.

(4) All claims made by the motorcycle or all-terrain vehicle dealer for compensation under this Subsection shall be paid within thirty days after approval and shall be approved or denied within thirty days after receipt. When any claim is denied, the motorcycle or all-terrain vehicle dealer shall be notified in writing of the grounds for denial.

(5) The obligations in this Subsection as they relate to motorcycles or all-terrain vehicles may be modified by contract.

B.(1) Notwithstanding the terms of any franchise, warranty, and sales incentive, audits of motorcycle or all-terrain vehicle 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 motorcycle or all-terrain vehicle dealer shall not be held liable by virtue of an audit for failure to retain parts for a period in excess of six months. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall be only for the twelve-month period immediately following the date of the final payment to the motorcycle or all-terrain vehicle dealer under a promotion, event, program, or activity. In no event shall the manufacturer, distributor, distributor branch, or factory branch fail to allow the motorcycle or all-terrain vehicle dealer to make corrections to the sales data in less than one hundred twenty days from the

program period. Additionally, no penalty other than amounts advanced on a motorcycle or all-terrain vehicle reported incorrectly shall be due in connection with the audit. With respect to motorcycles or all-terrain vehicles sold during the time period subject to the audit, but submitted incorrectly to the manufacturer, distributor, or wholesale distributor branch or factory branch, the motorcycle or all-terrain vehicle dealer shall be charged back for the amount reported incorrectly and credited with the amount due, if anything, on the actual sale date.

(2) No claim which has been approved and paid may be charged back to the motorcycle or all-terrain vehicle dealer unless it can be shown that one of the following applies:

(a) The claim was false or fraudulent.

(b) The repairs were not properly made.

(c) The repairs were unnecessary to correct the defective condition under generally accepted standards of workmanship.

(d) The motorcycle or all-terrain vehicle dealer failed to reasonably substantiate the repair in accordance with reasonable written requirements of the manufacturer or distributor, if the motorcycle or all-terrain vehicle dealer was notified of the requirements prior to the time the claim arose and if the requirements were in effect at the time the claim arose.

(3) A manufacturer or distributor shall not deny a claim solely based on a motorcycle or all-terrain vehicle dealer's incidental failure to comply with a specific claim processing requirement, or a clerical error, or other administrative technicality.

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

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

(6) No claim may be rejected as late if within sixty days of the date the repair order was written.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.14. Damage disclosure

A. Whenever a new motorcycle or all-terrain 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 motorcycle or all-terrain 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. Such notice shall be in writing and a copy thereof shall be delivered to the purchaser prior to or simultaneous with transfer of the motorcycle or all-terrain vehicle title.

B. This Section shall apply to all instances of vehicular body or mechanical damage to motorcycles or all-terrain 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.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.15. Sale of water-damaged motorcycles or all-terrain vehicles

A. No person shall sell, transfer, or convey any new or used motorcycle or all-terrain vehicle to any person without notifying the buyer or receiver of the motorcycle or all-terrain vehicle in writing of the extent of any water damage from flooding which occurred to the motorcycle or all-terrain vehicle prior to the transaction.

B. If a sale, transfer, or conveyance of a new or used motorcycle or all-terrain vehicle occurs in violation of Subsection A of this Section, the person receiving ownership and title to the motorcycle or all-terrain vehicle who is not otherwise aware of the damage at the time of the transaction may bring an action to set aside the transaction within one year from the date of the transaction and receive all monies or other property given as consideration for the motorcycle or all-terrain vehicle less a reasonable deducton for miles driven.

C. For the purposes of this Section, a "water-damaged motorcycle or all-terrain vehicle" means any motorcycle or all-terrain vehicle whose power train, computer, or electrical system has been damaged by flooding.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.16. Succession; right of first refusal

A. The terms of the franchise notwithstanding, any motorcycle or all-terrain vehicle dealer may appoint by will, or other written instrument, a designated successor to succeed in the ownership interest of the motorcycle or all-terrain vehicle dealer in the dealership upon the death or incapacity of the motorcycle or all-terrain vehicle dealer.

B. Unless good cause exists for refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased or incapacitated motorcycle or all-terrain vehicle dealer of a dealership may succeed to the ownership of the dealership under the existing franchise if:

(1) The designated successor gives the manufacturer or distributor written notice of his intention to succeed to the ownership of the motorcycle or all-terrain vehicle dealer within sixty days of the motorcycle or all-terrain vehicle dealer's death or incapacity.

(2) The designated successor agrees to be bound by all the terms and conditions of the franchise.

C. The manufacturer or distributor may request, and the designated successor shall provide, promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

D. If a manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated motorcycle or all-terrain vehicle dealer, the manufacturer or distributor may, not more than sixty days following receipt of notice of the designated successor's intent to succeed and receipt of such personal or financial data, serve upon the designated successor notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the motorcycle or all-terrain vehicle dealer not earlier than six months from the date such notice is served.

E. The notice must state the specific grounds for the refusal to honor the succession.

F. If notice of refusal and discontinuance is not timely served upon the designated successor, the franchise shall continue in effect subject to termination only as otherwise permitted by this Chapter.

G. In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards as a franchisee.

H. If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated owner for good cause, then and in such event:

(1) The manufacturer or distributor shall allow the designated successor a reasonable period of time which shall not be less than six months in which to consummate a sale of the dealership. Any such sale shall be subject to R.S. 32:1270.11(1)(c).

(2) Upon termination of the franchise pursuant to such refusal, the provisions of R.S. 32:1270.17 shall apply.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§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 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:

(a) All new motorcycles or all-terrain vehicles of the current and last prior model year delivered to the licensee and parts on hand that have not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the licensee. As to motorcycle or all-terrain vehicle dealers, the repurchase of parts shall be limited to those listed in the manufacturer's price book. The motorcycle or all-terrain vehicles and parts shall be repurchased at the cost to the licensee which shall include without limitation freight and advertising costs, less all allowances paid to the motorcycle or all-terrain vehicle dealer.

(b) At fair market value, each undamaged sign owned by the motorcycle or all-terrain vehicle dealer which bears a trademark or trade name used or claimed by the manufacturer, converter, distributor, or representative if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative. Fair market value shall be no less than cost of acquisition of the sign by the motorcycle or all-terrain vehicle dealer.

(c) At fair market value, all special tools and automotive service equipment owned by the motorcycle 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 or all-terrain vehicle dealer.

(2) The manufacturer, converter, distributor, or representative shall pay to the motorcycle or all-terrain vehicle dealer the costs of transporting, handling, packing, and loading of motorcycles or all-terrain

vehicles, or parts, signs, tools, and equipment subject to repurchase.

(3) The manufacturer or converter shall make the required repurchase after the dealer terminates his franchise and within sixty days of the submission to it, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, of a final inventory of motorcycles, all-terrain vehicles, and parts on hand.

B. Failure to make such 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.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.18. Manufacturer termination of line-make; manufacturer bankruptcy; license; motorcycle or all-terrain vehicle franchise

Notwithstanding the terms of any franchise or provision of law, if the termination, cancellation, or nonrenewal of a licensee's franchise is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, whether by bankruptcy or otherwise, the license issued by the commission may remain in effect at the discretion of the commission pursuant to its rules.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.19. Motorcycle or all-terrain vehicle repairs

Suppliers of mechanical repairs and services for any motorcycle or all-terrain vehicle subject to regulation pursuant to this Chapter shall provide each consumer with an itemized bill indicating repairs and services performed, parts replaced, or materials used, the total labor charge, and the identity of the mechanic, repairman, or supplier who performed the work. However, nothing in this Section shall prohibit a supplier of mechanical repairs and services from charging a service fee for the use of shop supplies such as rags, fender covers, small amounts of fluid, or other items which are not itemized, provided that such fee does not exceed five percent of the total invoice for mechanical repairs or thirty-five dollars, whichever is less.

Acts 2012, No. 326, §1, eff. August 1, 2012.

PART IV. PROVISIONS SPECIFIC TO RECREATIONAL VEHICLES

§1270.20. Unauthorized acts; recreational vehicles

It shall be a violation of this Chapter:

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

(a) To induce or coerce, or attempt to induce or coerce, any licensee:

(i) To order or accept delivery of any recreational vehicles, appliances, equipment, parts or

accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered.

(ii) To order or accept delivery of any recreational vehicle with special features, appliances, accessories, or equipment not included in the list price of the recreational vehicles as publicly advertised.

(iii) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(iv) To assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by law, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation between a manufacturer, distributor, wholesaler, or factory branch, or officer, agent, or other representative thereof.

(v) To enter into a franchise with a licensee or during the franchise term, use any written instrument, agreement, release, assignment, novation, estoppel, or waiver, to attempt to nullify or modify any provision of this Chapter, or to require any controversy between a recreational vehicle dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted courts of this state or the United States, if such referral would be binding upon the recreational dealer. Such instruments are null and void, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation.

(vi) To waive the right to a jury trial.

(vii) To participate in an advertising group or to participate monetarily in an advertising campaign or contest or to purchase any promotional materials, showroom, or other display decorations or materials at the expense of such recreational vehicle dealer.

(viii) To release, convey, or otherwise provide customer information, if to do so is unlawful or if the customer objects in writing. This does not include information that is necessary for the manufacturer to meet its obligations to the recreational vehicle dealer or consumers in regard to contractual responsibilities, recreational vehicle recalls, or other requirements imposed by state or federal law. The manufacturer is further prohibited from providing any consumer information received from the recreational vehicle dealer to any unaffiliated third party.

(ix) To pay the attorney fees of the manufacturer or distributor related to hearings and appeals brought under this Chapter.

(b) To refuse to deliver to any licensee having a franchise or contractual arrangement for the retail sale of recreational vehicles sold or distributed by such manufacturer, distributor, wholesaler, or factory branch, any recreational vehicle, publicly advertised for immediate delivery, within sixty days after such recreational vehicle dealer's order shall have been received.

(c) To threaten to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, wholesaler, or factory branch and the recreational vehicle dealer for any reason.

(d) To unfairly, without just cause and due regard to the equities of such recreational vehicle dealer, cancel the franchise of any licensee. The nonrenewal of a franchise with such recreational vehicle dealer or his successor without just provocation or cause, or the refusal to approve a qualified transferee or qualified successor to the dealer-operator as provided for in the franchise agreement, shall be deemed a violation of this Paragraph and shall constitute an unfair cancellation, regardless of the terms or provisions of such franchise. However, at least ninety-days notice shall be given to the recreational vehicle dealer of any cancellation or nonrenewal of a franchise except for a cancellation arising out of the financial default of the recreational vehicle dealer or fraudulent activity of the recreational vehicle dealer principal which results in the

conviction of a crime punishable by imprisonment.

(e) To refuse to extend to a licensee the privilege of determining the mode or manner of available transportation facility that such recreational vehicle dealer desires to be used or employed in making deliveries of recreational vehicles to him or it.

(f) To use any false or misleading advertisement in connection with his business as such manufacturer of recreational vehicles, distributor, wholesaler, or factory branch, or officer, agent, or other representative thereof.

(g) To delay, refuse, or fail to deliver recreational vehicles in reasonable quantities relative to the licensee's facilities and sales potential in the relevant market area. This Subparagraph shall not be valid, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, or other such party.

(h) To ship or sell recreational vehicles to a licensee prior to the licensee having been granted a license by the commission to sell such recreational vehicles.

(i) To unreasonably withhold consent to the sale, transfer, or exchange of the franchise to a qualified transferee capable of being licensed as a recreational vehicle dealer in this state, provided the transferee meets the criteria generally applied by the manufacturer in approving new recreational vehicle dealers and agrees to be bound by all the terms and conditions of the standard franchises.

(j) To fail to respond in writing to a written request for consent as specified in Subparagraph (i) of this Paragraph within sixty days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for such purposes and containing the information required therein. Failure to respond shall be deemed to be consent to the request.

(k)(i) To sell or offer to sell a new or unused recreational vehicle directly to a consumer except as provided in this Chapter, or to compete with a licensee in the same-line makes, models, or classifications operating under an agreement or franchise from the aforementioned manufacturer. A manufacturer shall not, however, be deemed to be competing when any one of the following conditions are met:

(aa) Operating a dealership temporarily for a reasonable period, not to exceed two years.

(bb) Operating a bona fide retail dealership which is for sale to any qualified independent person at a fair and reasonable price, for a period not to exceed two years.

(cc) Operating in a bona fide relationship in which a person independent of a manufacturer has made a significant investment subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

(ii) After any of the conditions have been met under Subitems (i)(aa) and (bb) of this Subparagraph, the commission shall allow the manufacturer to compete with licensees of the same-line makes, models, or classifications under an agreement or franchise from the manufacturer for longer than two years when, in the discretion of the commission, the best interest of the manufacturer, consuming public, and licensees are best served.

(l) To condition the renewal or extension of a franchise on a new recreational vehicle dealer's substantial renovation of the recreational vehicle dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the new recreational vehicle dealer, unless the manufacturer has advised the new recreational 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 recreational vehicle industry at the time such action would be required of the new recreational vehicle dealer. As part of any such condition, the manufacturer shall agree, in writing, to supply the recreational vehicle dealer with an adequate supply and marketable model mix of recreational vehicles to meet the sales levels necessary to support the increased overhead incurred by the recreational vehicle dealer by reason of such renovation, construction, purchase, or rental of a new place of business.

(m) To fail to compensate its recreational vehicle dealers for the work and services they are required to perform in connection with the recreational vehicle dealer's delivery and preparation obligations according to the terms of compensation that shall be filed with the commission on or before October first of each year. The commission shall find the compensation to be reasonable or the manufacturer shall remedy any deficiencies.

(n) To fail to designate and provide to the commission in writing the community or territory assigned to a licensee.

(o) To unreasonably discriminate among competing, similarly situated, same-line make dealers in the sales of recreational vehicles, in the availability of such recreational vehicles, in the terms of incentive programs or sales promotion plans, or in other similar programs.

(p) To terminate, cancel, or refuse to continue any franchise agreement based upon the fact that the recreational vehicle dealer owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new recreational vehicles at a different dealership location, or intends to or has established another make or line of new recreational vehicles in the same dealership facilities of the manufacturer or distributor.

(q) To demand compliance with facilities requirements that include any requirements that a recreational vehicle dealer establish or maintain exclusive offices, parts, service or body shop facilities, unless such requirements would be reasonable and justified by business considerations. The burden of proving that such 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 deny the request in writing within sixty days of receipt of such request.

(r) To use any subsidiary, affiliate, or any other controlled person or entity, or to employ the services of a third party, to accomplish what would otherwise be illegal conduct under this Chapter on the part of the manufacturer or distributor.

(s) To make a change in the area of responsibility described in the franchise agreement or sales and service agreement of a recreational vehicle dealer, without the franchisor or manufacturer giving the recreational vehicle dealer and the commission no less than sixty days prior written notice by certified or registered mail.

(t) To induce or coerce, or attempt to induce or coerce, any recreational vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or factory branch or representative thereof, or to do any other act unfair to the recreational vehicle dealer.

(u)(i) To coerce or attempt to coerce any retail recreational vehicle dealer or prospective retail recreational vehicle dealer to offer to sell or sell any extended service contract or extended maintenance plan or gap product offered, sold, backed by, or sponsored by the manufacturer or distributor or affiliate or sell, assign, or transfer any retail installment sales contract or lease obtained by the dealer in connection with the sale or lease by him of recreational vehicles manufactured or sold by the manufacturer or distributor, to a

specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified persons by any of the following:

(aa) By any statement, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is express or implied or made directly or indirectly.

(bb) By any act that will benefit or injure the dealer.

(cc) By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling the recreational vehicle on the condition that the recreational vehicle dealer shall offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or that the dealer sell, assign, or transfer his retail installment sales contract on or lease of the recreational vehicle, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified person.

(dd) Any statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition.

(ii) Nothing contained in this Subparagraph shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail recreational vehicle dealer or prospective retail recreational vehicle dealer who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any retail installment sale or lease by him of recreational vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company.

(2) For a recreational vehicle dealer or a recreational vehicle salesman:

(a) To require a purchaser of a recreational vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; however, this prohibition shall not apply as to special features, appliances, accessories, or equipment which are permanently affixed to the recreational vehicle.

(b) To represent and sell as a new recreational vehicle any vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(c) To use any false or misleading advertisement in connection with his business as such recreational vehicle dealer or recreational vehicle salesman.

(d) To sell or offer to sell makes, models, or classifications of new recreational vehicles for which no franchise and license to sell is held.

(e) Except as otherwise approved by the commission, to sell or offer to sell a recreational vehicle from an unlicensed location.

(f) To deliver to a prospective purchaser a new recreational vehicle on a sale conditioned on financing, i.e., a spot delivery, except on the following terms and conditions which shall be in writing and shall be a part of the conditional sales contract or other written notification signed by the purchaser:

(i) That if the sale is not concluded by the financing of the sale to the purchaser within twenty-five days of the delivery, the sale contract shall be null and void.

(ii) That the recreational vehicle being offered for trade-in by the purchaser shall not be sold by the recreational vehicle dealer until the conditional sale is complete.

(iii) That there shall be no charge to the purchaser should the conditional sale not be completed, including but not limited to mileage charges or charges to refurbish the recreational vehicle offered for trade-in. However, the purchaser shall be responsible for any and all damages to the recreational vehicle or other vehicles damaged by the fault of the purchaser and any and all liability incurred by the purchaser during the purchaser's custody of the recreational vehicle to the extent provided for in R.S. 22:1296.

(iv) That if the conditional sale is not completed, the recreational vehicle dealer shall immediately refund to the purchaser upon return of the recreational vehicle all sums placed with the dealership as a deposit or any other purpose associated with the attempted sale of the vehicle.

(v) That the prospective purchaser shall return the recreational vehicle to the dealership within forty-eight hours of notification by the recreational vehicle dealer that the conditional sale will not be completed. If the prospective purchaser does not return the recreational vehicle to the dealership within forty-eight hours of notification by the recreational vehicle dealer, an authorized agent of the recreational vehicle dealer shall have the right to recover the recreational vehicle without the necessity of judicial process, provided that such recovery can be accomplished without unauthorized entry into a closed dwelling, whether locked or unlocked, and without a breach of peace.

(g) To pay a fee to any person in return for the solicitation, procurement, or production by that person of prospective purchasers for new and used recreational vehicles, except to a recreational vehicle salesman licensed under the provisions of this Chapter.

(h) To fail to fully and completely explain each charge listed on a retail buyer's order or recreational vehicle invoice prior to the purchase of a recreational vehicle.

(i) When selling a recreational vehicle to a consumer, to assess any consumer services fees, which shall include fees for treating the interior upholstery of the recreational vehicle, oil changes, roadside assistance, dealer inspections, or any other service offered by the recreational vehicle dealer, without allowing the buyer to refuse such services and be exempt from payment for such services. The provisions of this Subparagraph shall not apply to dealer-added options or accessories which are permanently affixed to the recreational vehicle.

(j) (i) To fail to disclose to a purchaser in writing on the sales contract, buyer's order, or any other document that the recreational vehicle dealer may be participating in finance charges associated with the sale.

(ii) To participate in a finance charge that would result in a difference between the buy rate and the contract rate of more than three percentage points.

(iii) The provisions of this Subparagraph shall apply only to transactions subject to the Louisiana Motor Vehicle Sales Finance Act.

(3)(a) For any person or other licensee 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 a 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.

(b) In making a determination of whether there is good cause for permitting a proposed modification, the commission may consider any relevant factor including:

(i) The reasons for the proposed modification.

(ii) Whether the proposed modification is applied to or affects all licensees in a nondiscriminating manner.

(iii) The degree to which the proposed modification will have a substantial and adverse effect upon the licensee's investment or return on investment.

(iv) Whether the proposed modification is in the public interest.

(v) The degree to which the proposed modification is necessary to the orderly and profitable distribution of recreational vehicles and other services by the licensee.

(vi) Whether the proposed modification is offset by other modifications beneficial to the licensee.

(c) The decision of the commission shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed modification. The commission shall deliver copies of the decision to the parties personally or by registered mail.

(4) For any employee of a licensee while acting in the scope of his employment, to accept any payment, commission, fee, or compensation of any kind from any person other than the employing licensee, unless such payment is fully disclosed to and approved by the employing licensee.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.21. Indemnification of franchised recreational vehicle dealers

Notwithstanding the terms of any franchise agreement, each manufacturer or converter shall indemnify and hold harmless its franchised recreational vehicle dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the recreational vehicle dealer, arising out of complaints, claims, or lawsuits including but not limited to strict liability, negligence, misrepresentation, express or implied warranty, or rescission of sale to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly, or design of recreational vehicles, parts, or accessories, or other functions by the manufacturer of converter, which are beyond the control of the recreational vehicle dealer.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.22. Payment to recreational vehicles dealers; penalties

It shall be a violation of this Chapter for a recreational vehicle manufacturer, distributor, wholesaler, factory branch, officer, agent or other representative thereof, to fail to pay a recreational vehicle dealer all monies due the recreational vehicle dealer, except manufacturer hold-back amounts, within thirty days of the date of completion of the transactions or submissions of the claims giving rise to the payments to the

recreational vehicle dealers. Failure to make payments shall subject the manufacturer, distributor, wholesaler, factory branch, officer, agent, or other representative thereof, to a penalty of the one and one-half percent interest per month, or fraction thereof, until sums due the recreational vehicle dealer are fully paid.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.23. Warranty; compensation; audits of recreational vehicle dealer records

A.(1) It shall be a violation of this Chapter for a manufacturer, a distributor, a wholesaler, or factory branch, or officer, agent or other representative thereof, to fail to adequately and fairly compensate its recreational vehicle dealers for labor, parts, and other expenses incurred by such dealer to perform under and comply with a manufacturer's or a distributor's warranty agreement.

(2) In no event shall any manufacturer or distributor pay its recreational vehicle dealers at a price or rate for warranty work that is less than that charged by the recreational vehicle dealer to the retail customers of the recreational vehicle dealer for nonwarranty work of like kind.

(3) Warranty work includes parts and labor performed.

(4) All claims made by the recreational vehicle dealer for compensation under this Subsection shall be paid within thirty days after approval and shall be approved or denied within thirty days after receipt. When any claim is denied, the recreational vehicle dealer shall be notified in writing of the grounds for denial.

(5) The obligations in this Subsection may be modified by contract.

B.(1) Notwithstanding the terms of any franchise agreement, warranty, and sales incentive, audits of recreational vehicle dealer records may be conducted by the manufacturer, distributor, 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 recreational vehicle dealer shall not be held liable by virtue of an audit for failure to retain parts for a period in excess of six months. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall be only for the twelve-month period immediately following the date of the final payment to the recreational vehicle dealer under a promotion, event, program, or activity. In no event shall the manufacturer, distributor, or factory branch fail to allow the recreational vehicle dealer to make corrections to the sales data in less than one hundred twenty days from the program period. Additionally, no penalty other than amounts advanced on a recreational vehicle reported incorrectly shall be due in connection with the audit. With respect to recreational vehicles sold during the time period subject to the audit, but submitted incorrectly to the manufacturer, distributor, or wholesale distributor branch or factory branch, the recreational vehicle dealer shall be charged back for the amount reported incorrectly and credited with the amount due, if anything, on the actual sale date.

(2) No claim which has been approved and paid may be charged back to the recreational vehicle dealer unless it can be shown that one or all of the following applies:

(a) The claim was false or fraudulent.

(b) The repairs were not properly made.

(c) The repairs were unnecessary to correct the defective condition under generally accepted standards of workmanship.

(d) The recreational vehicle dealer failed to reasonably substantiate the repair in accordance

with reasonable written requirements of the manufacturer or distributor, if the recreational vehicle dealer was notified of the requirements prior to the time the claim arose and if the requirements were in effect at the time the claim arose.

(3) A manufacturer or distributor shall not deny a claim solely based on a recreational vehicle dealer's incidental failure to comply with a specific claim processing requirement, or a clerical error, or other administrative technicality.

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

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

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

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.24. Recreational vehicle repairs

Suppliers of mechanical repairs and services for any recreational vehicle subject to regulation pursuant to this Chapter shall provide each consumer with an itemized bill indicating repairs and services performed, parts replaced, or materials used, the total labor charge, and the identity of the mechanic, repairman, or supplier who performed the work. However, nothing in this Section shall prohibit a supplier of mechanical repairs and services from charging a service fee for the use of shop supplies such as rags, fender covers, small amounts of fluid, or other items which are not itemized, provided that such fee does not exceed five percent of the total invoice for mechanical repairs or thirty-five dollars, whichever is less.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.25. Damage disclosure; recreational vehicles

A. Whenever a new recreational vehicle subject to regulation pursuant to this Part is sold to any person, the seller shall notify the purchaser of any body damage or mechanical damage which the recreational vehicle has sustained that exceeds six percent of the manufacturer's wholesale price. Such notice shall be in writing and a copy thereof shall be delivered to the purchaser prior to or simultaneous with transfer of the recreational 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 items are replaced with original manufacturers' parts and materials.

C. This Section shall apply to all instances of vehicular body or mechanical damage to recreational 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.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.26. Notice regarding recalls; recreational vehicles

It shall be a violation of this Part for a recreational vehicle dealer to sell a new recreational vehicle without first supplying a prospective buyer with the following notice: "A new recreational vehicle may have been subject to a National Highway Traffic Safety Administration required recall which would be repaired in accordance with manufacturer standards approved by the National Highway Traffic Safety Administration. If such a repair is a concern before you purchase, please ask for a copy of the recall notice, if applicable, to the recreational vehicle being sold." This notice shall be included on the buyer's order in a box and in bold print which is signed by the buyer and the seller or his representative next to the box. If the buyer requests the recall notice, the recall notice shall be included in the sales transaction. If the selling recreational vehicle dealer performed the repair, the documents supporting the repair shall also be included in the sales transaction.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.27. Sale of water-damaged recreational vehicles

A. No person shall sell, transfer, or convey any new or used recreational vehicle to any person without notifying the buyer or receiver of the recreational vehicle in writing of the extent of any water damage from flooding which occurred to the recreational vehicle prior to the transaction.

B. If a sale, transfer, or conveyance of a new or used recreational vehicle occurs in violation of Subsection A of this Section, the person receiving ownership and title to the recreational vehicle who is not otherwise aware of the damage at the time of the transaction may bring an action to set aside the transaction within one year from the date of the transaction and receive all monies or other property given as consideration for the vehicle less a reasonable assessment for miles driven.

C. For the purposes of this Section, a "water-damaged vehicle" means any recreational vehicle whose power train, computer, or electrical system has been damaged by flooding.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.28. Succession; right of first refusal; recreational vehicle dealer

A.(1) The terms of the franchise notwithstanding, any recreational vehicle dealer may appoint by will, or other written instrument, a designated successor to succeed in the ownership interest of the recreational vehicle dealer in the dealership upon the death or incapacity of the recreational vehicle dealer.

(2) Unless good cause exists for refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased or incapacitated recreational vehicle dealer of a dealership may succeed to the ownership of the dealership under the existing franchise if:

(a) The designated successor gives the manufacturer or distributor written notice of his intention to succeed to the ownership of the recreational vehicle dealer within sixty days of the recreational vehicle dealer's death or incapacity.

(b) The designated successor agrees to be bound by all the terms and conditions of the franchise.

(3) The manufacturer or distributor may request, and the designated successor shall provide, promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

(4) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated recreational vehicle dealer, the manufacturer or distributor may, not more than sixty days following receipt of notice of the designated successor's intent to succeed and receipt of such personal or financial data, serve upon the designated successor notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer not earlier than six months from the date such notice is served.

(5) The notice must state the specific grounds for the refusal to honor the succession.

(6) If notice of refusal and discontinuance is not timely served upon the designated successor, the franchise shall continue in effect subject to termination only as otherwise permitted by this Chapter.

(7) In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards as a franchisee.

(8) If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated owner for good cause, then and in such event:

(a) The manufacturer or distributor shall allow the designated successor a reasonable period of time which shall not be less than six months in which to consummate a sale of the dealership. Any such sale shall be subject to R.S. 32:1270.20(1)(d).

(b) Upon termination of the franchise pursuant to such refusal, the provisions of R.S. 32:1270.29 shall apply.

B. In the event of a proposed sale or transfer of a recreational vehicle dealership and if the franchise agreement has a right of first refusal in favor of the manufacturer or distributor, then, notwithstanding the terms of the franchise agreement, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the recreational vehicle dealer's assets or ownership if all of the following requirements are met:

(1) In order to exercise its right of first refusal, the manufacturer or distributor shall notify the recreational vehicle dealer in writing within sixty days of his receipt of the completed proposal for the proposed sale or transfer and all related agreements.

(2) The applicability of R.S. 32:1270.20(1)(l) shall not be expanded or changed.

(3) The exercise of the right of first refusal will result in the recreational vehicle dealer receiving the same or greater consideration as he has contracted to receive in connection with the proposed change of ownership or transfer.

(4) The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more recreational vehicle dealers, or to a qualified manager with at least two years management experience at the dealership of one or more of these recreational vehicle dealers, or to a partnership or corporation controlled by such persons.

(5) (a) The manufacturer or distributor agrees to pay the reasonable expenses, including attorney

fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Such expenses and attorney fees shall be paid to the proposed new owner or transferee at the time of closing of the sale or transfer for which the manufacturer or distributor exercised its right of first refusal.

(b) No payment of such expenses and attorney fees shall be required if the new owner or transferee has not submitted or caused to be submitted an accounting of those expenses within thirty days of the recreational vehicle dealer's receipt of the manufacturer's or distributor's written request for such an accounting. A manufacturer or distributor may request such accounting before exercising his right of first refusal.

(6) The recreational vehicle dealer shall not have any liability to any person as a result of a manufacturer's exercising its right of first refusal and the manufacturer or distributor shall assume the defense of the selling dealer for any claim by the proposed owner or transferee arising from the exercise of the right of first refusal.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§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:

(a) All new recreational vehicles of the current and last prior model year delivered to the licensee and parts limited to those listed in the manufacturer's price book. The recreational vehicles and parts shall be repurchased at the cost to the licensee which shall include without limitation freight and advertising costs, less all allowances paid to the recreational vehicle dealer.

(b) At fair market value, each undamaged sign owned by the recreational vehicle dealer which bears a trademark or trade name used or claimed by the manufacturer, distributor, or representative if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative. Fair market value shall be no less than cost of acquisition of the sign by the recreational vehicle dealer.

(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 cost of acquisition of special tools and automotive service equipment by the recreational vehicle dealer.

(2) The manufacturer, converter, distributor, or representative shall pay to the recreational vehicle dealer the costs of transporting, handling, packing, and loading of recreational vehicles, or parts, signs, tools, and equipment subject to repurchase.

(3) The manufacturer or converter shall make the required repurchase after the recreational vehicle dealer terminates his franchise and within sixty days of the submission to it, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, of a final inventory of recreational vehicles and parts on hand.

B. Failure to make such 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.

C.(1) Upon the involuntary termination, nonrenewal, or cancellation of any franchise by the manufacturer or converter, except for termination, nonrenewal, or cancellation resulting from a felony conviction, notwithstanding the terms of any franchise, whether entered into before or after the enactment of this Chapter or any of its provisions, the new recreational vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or converter as agreed by the parties, or lacking agreement, as determined by the commission, for the dealership facilities if the facilities were required to be purchased or constructed as a precondition to obtaining the franchise or to its renewal; provided that if such facilities were leased and the lease was required as a precondition to obtaining the franchise or to its renewal, then the manufacturer shall be liable for one year's payment of the rent or the remainder of the term of the lease, whichever is less.

(2) Payment under this Section shall entitle the manufacturers, converters, or distributors to possession and use of the facility.

(3) As used in this Section, "manufacturer" shall include a manufacturer, a converter, a distributor, a factory branch, distributor branch, or other subsidiary thereof.

(4) The obligation of the manufacturer or converter to purchase a dealership facility, pursuant to this Section, is equally applicable if an entity or person affiliated with the dealer is the owner or lessor of the facility.

Acts 2012, No. 326, §1, eff. August 1, 2012.

§1270.30. Recreational vehicle manufacturer termination of line-make; manufacturer bankruptcy; license

Notwithstanding the terms of any franchise or other provision of law, if the termination, cancellation, or nonrenewal of a licensee's franchise is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, whether by bankruptcy or otherwise, the license issued by the commission may remain in effect at the discretion of the commission pursuant to its rules.

Acts 2012, No. 326, §1, eff. August 1, 2012.

CHAPTER 6-A. LOUISIANA VEHICLE PROTECTION PRODUCT ACT

§1271. Short title

This Chapter may be cited as the "Louisiana Vehicle Protection Product Act".

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1272. Definitions

The following words, terms, and phrases, when used in this Chapter, shall have the following meaning:

(1) "Administrator" means a third party other than the warrantor who is designated by the warrantor

to be responsible for the administration of vehicle product warranties.

(2) "Commission" means the Louisiana Motor Vehicle Commission.

(3) "Executive director" means the executive director of the Louisiana Motor Vehicle Commission.

(4) "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

(5) "Vehicle mechanical breakdown insurance policy" means a contract or agreement as defined pursuant to R.S. 22:361(7).

(6) "Vehicle protection product" means a vehicle protection device, system, or service that is:

(i) Installed on or applied to a vehicle.

(ii) Designed to prevent loss or damage to a vehicle from a specific cause.

(iii) Includes a written warranty.

For purposes of this Chapter vehicle protection product shall include, without limitation, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

(7) "Vehicle protection product warrantor" or "warrantor" means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement. Warrantor does not include an authorized insurer providing a warranty reimbursement insurance policy.

(8) "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, that the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty.

(9) "Warranty holder" means a person who purchases a vehicle protection product or who is a permitted transferee.

(10) "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties issued the warrantor.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008; Acts 2008, No. 415, §2, eff. Jan. 1, 2009.

§1273. Scope and exemptions

A. No vehicle protection product may be sold or offered for sale unless the seller, warrantor, and administrator, if any, comply with the provisions of this Chapter.

B. Vehicle protection product warrantors and related vehicle protection product sellers and warranty administrators complying with this Chapter are not required to comply with and are not subject to any other provision of the Louisiana Insurance Code.

C. (1) Vehicle mechanical breakdown insurance policy providers who do not sell vehicle protection products are not subject to the requirements of this Chapter.

(2) Sales of vehicle protection products are exempt from the requirements of the Louisiana Insurance Code.

D. Warranties, indemnity agreements, and guarantees that are not provided as a part of a vehicle protection product are not subject to the provisions of this Chapter.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1274. License and filing requirements; licensing fees

A. A person may not operate as a warrantor or represent to the public that the person is a warrantor unless the person is licensed by the commission on a form prescribed by the executive director.

B. Warrantor registration records shall be filed annually and shall be updated within thirty days of any change. The registration records shall contain the following information:

(1) The warrantor's name, any fictitious names under which the warrantor does business in the state, principal office address, and telephone number.

(2) The name and address of the warrantor's agent for service of process in the state if other than the warrantor.

(3) The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business.

(4) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this state.

(5) A copy of the warranty reimbursement insurance policy or policies or other financial information required by R.S. 32:1275.

(6) A copy of each warranty the warrantor proposes to use in this state.

(7) A statement indicating under which provision of R.S. 32:1275 the warrantor qualifies to do business in this state as a warrantor.

C. If a registrant fails to register by the renewal deadline, the executive director shall give him written notice of the failure and the registrant will have thirty days from mailing of the notice to complete the renewal of his registration before he is suspended from being registered in this state.

D. An administrator or person who sells or solicits a sale of a vehicle protection product but who is not a warrantor shall not be required to register as a warrantor or be licensed under the insurance laws of this state to sell vehicle protection products.

E. (1) The licensing fee for a warrantor for each calendar year or part thereof shall not exceed five hundred dollars as fixed by the commission.

(2) All licensing fees collected under the provisions of this Section shall be paid to the commission, shall be nonrefundable, and shall be used for the administration of this Chapter by the commission.

(3) Upon approval of an application and the payment of a fee, the commission shall issue a license to the applicant to engage in business as a warrantor under and in accordance with the provisions of Chapter 6 of this Title and this Chapter for a period which shall expire the last day of December following the date of issuance. Such license shall not be transferable or assignable.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008; Acts 2008, No. 893, §1, eff. July 10, 2008.

§1275. Financial responsibility

No vehicle protection product shall be sold, or offered for sale in this state unless the warrantor meets one of the following conditions in order to ensure adequate performance under the warranty. No other financial security requirements or financial standards for warrantors shall be required.

(1) The vehicle protection product warrantor is insured under a warranty reimbursement insurance policy issued by an insurer authorized to do business in state which provides that:

(a) The insurer will pay to, or on behalf of, the warrantor one hundred percent of all sums that the warrantor is legally obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty.

(b) A true and correct copy of the warranty reimbursement insurance policy has been filed with the executive director by the warrantor.

(c) The policy contains the provision required in R.S. 32:1276.

(2) (a) The vehicle protection product warrantor, or its parent company in accordance with this Paragraph, maintains a net worth or stockholders' equity of fifty million dollars.

(b) The warrantor provides the executive director with a copy of the warrantor's or the warrantor's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year or, if the warrantor does not file with the Securities and Exchange Commission, a copy of the warrantor's or the warrantor's parent company's audited financial statements that shows a net worth of the warrantor or its parent company of at least fifty million dollars. If the warrantor's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet the warrantor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the warrantor relating to warranties issued by the warrantor in this state. The private financial information filed under this Paragraph shall be confidential as a trade secret of the entity filing the information and not subject to public disclosure.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1276. Warranty reimbursement policy requirements

No warranty reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy meets the following conditions:

(1) The policy states that the issuer of the policy will reimburse or pay on behalf of the vehicle protection product warrantor all covered sums which the warrantor is legally obligated to pay or will provide all the services that the warrantor is legally obligated to perform according to the warrantor's contractual obligations under the provisions of the insured warranties issued by the warrantor.

(2) The policy states that in the event payment is due under the terms of the warranty, and such payment is not provided by the warrantor within sixty days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement.

(3) The policy provides that a warranty reimbursement insurance company that insures a warranty shall be deemed to have received payment of the premium if the warranty holder paid for the vehicle protection product and the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer.

(4) The policy has the following provisions regarding cancellation of the policy:

(a) The issuer of a reimbursement insurance policy shall not cancel such policy until a notice

of cancellation in writing has been mailed or delivered to the executive director and each insured warrantor.

(b) The cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for vehicle protection products sold prior to the date of cancellation.

(c) In the event an insurer cancels a policy that a warrantor has filed with the executive director, the warrantor shall do either of the following:

(i) File a copy of a new policy with the executive director, before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy.

(ii) Discontinue offering warranties as of the termination date of the policy until a new policy becomes effective and is accepted by the executive director.

(5) Other provisions and conditions the commission may adopt and promulgate by rule.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1277. Disclosure to warranty holder

A. A vehicle protection product warranty shall not be sold or offered for sale in this state unless the warranty:

(1) States the following: "The obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy" if the warrantor elects to meet its financial responsibility obligations under R.S. 32:1275(1), or states "The obligations of the warrantor under this warranty are backed by the full faith and credit of the warrantor" if the warrantor elects to meet its financial responsibility obligations under R.S. 32:1275(2).

(2) States that in the event a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within sixty days after proof of loss has been filed with the warrantor, if the warrantor elects to meet its financial responsibility obligations under R.S. 32:1275(1).

(3) States the name and address of the issuer of the warranty reimbursement insurance policy, and this information need not be preprinted on the warranty form, but may be added to or stamped on the warranty, if the warrantor elects to meet its financial responsibility obligations under R.S. 32:1275(1).

(4) Identifies the warrantor, the seller, and the warranty holder.

(5) Sets forth the total purchase price and the terms under which it is to be paid, however, the purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale.

(6) Sets forth the procedure for making a claim, including a telephone number.

(7) Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions or exclusions.

(8) Sets forth all of the obligations and duties of the warranty holder such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any.

(9) Sets forth any terms, restrictions, or conditions governing transferability and cancellation of the warranty, if any.

(10) Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."

B. Incidental costs may be reimbursed under the provisions of the warranty in either a fixed amount specified in the warranty or sales agreement or by the use of a formula itemizing specific incidental costs incurred by the warranty holder.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1278. Prohibited acts

A. Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts, or literature, any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other vehicle protection product warrantor. A warrantor may use the term "guaranty" or similar word in the warrantor's name.

B. A vehicle protection product seller or warrantor may not require as a condition of financing that a retail purchaser of a motor vehicle purchase a vehicle protection product.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1279. Record keeping

A. All vehicle protection product warrantors shall keep accurate accounts, books, and records concerning transactions regulated under this Chapter.

B. A vehicle protection product warrantor's accounts, books, and records shall include:

(1) Copies of all vehicle protection product warranties.

(2) The name and address of each warranty holder.

(3) The dates, amounts, and descriptions of all receipts, claims, and expenditures.

C. A vehicle protection product warrantor shall retain all required accounts, books, and records pertaining to each warranty holder for at least two years after the specified period of coverage has expired. A warrantor discontinuing business in this state shall maintain its records until it furnishes the executive director satisfactory proof that it has discharged all obligations to warranty holders in this state.

D. Vehicle protection product warrantors shall make all accounts, books, and records concerning transactions regulated under this Chapter available to the executive director for examination.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1280. Enforcement; examination

A. The executive director may conduct examinations of warrantors, administrators, or other persons to enforce this Chapter and protect warranty holders in this state. Upon request of the executive director, a warrantor shall make available to the executive director all accounts, books, and records concerning vehicle protection products sold by the warrantor that are necessary to enable the executive director to reasonably determine compliance or noncompliance with this Chapter.

B. The executive director may take action that is necessary or appropriate to enforce the provisions of this Chapter and the executive director's rules and orders and to protect warranty holders in this state. If

a warrantor engages in a pattern or practice of conduct that violates this Chapter and that the executive director reasonably believes threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of any person or company located in this state, the executive director may take such enforcement action, including without limitation, such orders and fines as are authorized in Chapter 6 of this Title.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1281. Rulemaking power

The executive director may adopt such rules and regulations consistent with the provisions of this Chapter as are necessary to implement them. Such rules and regulations shall include disclosures for the benefit of the warranty holder, record keeping, and procedures for public complaints. Such rules and regulations shall also include the conditions under which surplus lines insurers may be rejected for the purpose of underwriting vehicle protection product warranty agreements.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.

§1282. Applicability

This Chapter applies to all vehicle protection products sold or offered for sale on or after September 1, 2008. The failure of any person to comply with this Chapter prior to January 1, 2008, shall not be admissible in any court proceeding, administrative proceeding, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper.

Acts 2007, No. 388, §1, eff. Jan. 1, 2008.