

Regular Session, 2010

HOUSE BILL NO. 1222

BY REPRESENTATIVE ARNOLD

MOTOR VEHICLES: Provides relative to the distribution and sale of motor vehicles

1 AN ACT
2 To amend and reenact R.S. 32:1252(27), 1254(A)(19), (B), (C)(introductory paragraph) and
3 (9) and (10), (D)(introductory paragraph) and (7), (E)(7) and (9)(d), (F)(introductory
4 paragraph) and (4), (J)(introductory paragraph) and (5), (L)(introductory paragraph)
5 and (5), and (N), 1255(A), 1261(1)(a)(introductory paragraph) and (i), (b), (d), (e),
6 (g) through (i), (k)(i)(introductory paragraph) and (ii), (n), and (p), (2)(introductory
7 paragraph), (a) through (e), (f)(introductory paragraph), (ii), and (iv), (g), and (i), (3),
8 (4)(a), (b), and (d), (5)(a), (b), and (d), and (7), 1261.1, 1262(A)(1) and (B)(3), 1263,
9 1264, and 1268(A)(1)(introductory paragraph), (a), and (d), and (2), and (B), to enact
10 R.S. 32:1252(51) and (52) and 1260(E) and (F), and to repeal R.S. 32:1268.1,
11 relative to the Motor Vehicle Commission; to provide for definitions; to provide for
12 changes to licensure for persons licensed by the commission; to provide for changes
13 to licensure requirements; to provide for change to insurance requirements; to
14 provide for additional penalties and relief for the commission; to provide for changes
15 to unauthorized acts of licensee of the commission; to provide for changes to
16 termination requirements of a licensee of the commission; and to provide for related
17 matters.
18 Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 32:1252(27), 1254(A)(19), (B), (C)(introductory paragraph) and (9)
 2 and (10), (D)(introductory paragraph) and (7), (E)(7) and (9)(d), (F)(introductory paragraph)
 3 and (4), (J)(introductory paragraph) and (5), (L)(introductory paragraph) and (5), and (N),
 4 1255(A), 1261(1)(a)(introductory paragraph) and (i), (b), (d), (e), (g) through (i),
 5 (k)(i)(introductory paragraph) and (ii), (n), and (p), (2)(introductory paragraph), (a) through
 6 (e), (f)(introductory paragraph), (ii), and (iv), (g), and (i), (3), (4)(a), (b), and (d), (5)(a), (b),
 7 and (d), and (7), 1261.1, 1262(A)(1) and (B)(3), 1263, 1264, and 1268(A)(1)(introductory
 8 paragraph), (a), and (d), and (2), and (B) are hereby amended and reenacted and R.S.
 9 32:1252(51) and (52) and 1260(E) and (F) are hereby enacted to read as follows:

10 §1252. Definitions

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

14 * * *

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

19 * * *

20 (51) "Vehicle" means any motor vehicle, specialty vehicle, or recreational
 21 product subject to regulation by this Chapter.

22 (52) "Dealer" means any person licensed to sell a motor vehicle or
 23 recreational product subject to regulation by this Chapter.

24 §1254. Application for license; requirements for licensure; contents; licenses;
 25 franchise filings

26 A. The following persons shall be licensed by the commission in order to
 27 engage in business in the state of Louisiana, regardless of whether or not said person

1 maintains or has a place or places of business in this state, and it is a violation of this
2 Chapter to operate without first obtaining a license:

3 * * *

4 (19) Auto shows, trade shows, and exhibitions, including ~~promoters~~
5 promoters and nonresident exhibitors.

6 B.(1)(a) All applications for license or licenses shall be accompanied by the
7 appropriate fee or fees in accordance with the schedule set out in R.S. 32:1255. ~~In~~
8 ~~the event any application is denied and the license applied for is not issued, the entire~~
9 ~~license fee shall be returned to the applicant.~~ All such fees shall be nonrefundable.

10 Except as provided in Paragraph (2) of this Subsection, all licenses issued under the
11 provisions of this Chapter in accordance with the geographical location of the
12 licensee will be for the year beginning and ending as follows:

13 1st Commission District--April 1 through March 31.

14 2nd Commission District--May 1 through April 30.

15 3rd Commission District--June 1 through May 31.

16 4th Commission District--July 1 through June 30.

17 5th Commission District--August 1 through July 31.

18 6th Commission District--September 1 through August 31.

19 7th Commission District--October 1 through September 30.

20 8th Commission District--November 1 through October 31.

21 (b) Except that commencing January 1, 2011, licenses shall be issued for a
22 term of two years initially staggering the two-year license so Commission Districts
23 1, 3, 5, and 7 will be issued a one-year license in 2011 and a two-year license
24 thereafter. Recreational product license fees shall be prorated to cover the period
25 from December 31, 2010, until license renewal.

26 (2) The license of any recreational products dealer ~~or shall expire December~~
27 31, 2010, and the license of any licensee who does not maintain a place of business
28 in this state shall expire on December thirty-first of each year.

1 C. General licensing and compliance requirements for all license applicants
2 and holders-;

3 * * *

4 (9) ~~All licensees are required to furnish and keep in force required liability~~
5 ~~insurance coverage or liability protection provided by a liability trust fund as~~
6 ~~authorized by R.S. 22:46(9)(d) on vehicles in accordance with the financial~~
7 ~~responsibility laws of the state of Louisiana. All applications for license pursuant~~
8 ~~to this Chapter shall include evidence the applicant has insurance covering its place~~
9 ~~of business and its operation that complies with the financial responsibility laws of~~
10 ~~this state and as determined by the applicant and its insurance agent, that is necessary~~
11 ~~to provide coverage to the place and nature of the business sought to be licensed to~~
12 ~~protect the applicant and the consumers of this state. Failure to maintain such~~
13 ~~insurance or liability protection shall result in the immediate suspension of license,~~
14 ~~which suspension shall be effective as of the date of said failure to maintain said~~
15 ~~liability insurance coverage or liability protection until proof of the required liability~~
16 ~~insurance or liability protection is furnished to the commission. If no proof is~~
17 ~~furnished to the commission within thirty days, the license of said licensee shall be~~
18 ~~revoked. Recreational product dealers selling all-terrain vehicles shall not be~~
19 ~~required to furnish and keep in force the minimum garage liability insurance~~
20 ~~coverage on all-terrain vehicles offered for sale unless the vehicles are utilized on the~~
21 ~~streets and roadways for demonstration or any other purpose.~~

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

25 * * *

26 D. Additional licensing and compliance requirements for manufacturers,
27 distributors, wholesalers, converters or secondary manufacturers, distributors or
28 wholesalers, factory branches and distributor branches-;

29 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

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

7 * * *

8 (7) All motor vehicle or recreational products ~~dealers shall furnish evidence~~
9 ~~that they currently have garage liability insurance or liability protection provided by~~
10 ~~a liability trust fund as authorized by R.S. 22:46(9)(d) covering their place of~~
11 ~~business. The required insurance policy or liability protection shall have limits of~~
12 ~~not less than one hundred thousand dollars for bodily injury to one person, three~~
13 ~~hundred thousand dollars per accident, and fifty thousand dollars for property~~
14 ~~damage~~ dealer applications for license pursuant to this Chapter shall include
15 evidence the applicant has insurance covering its place of business and its operation
16 that complies with the financial responsibility laws of this state and as determined
17 by the applicant and its insurance agent, that is necessary to provide coverage to the
18 place and nature of the business sought to be licensed to protect the applicant and the
19 consumers of this state. Said insurance ~~or liability protection~~ shall be maintained
20 throughout the period of licensure. Failure to maintain such insurance ~~or liability~~
21 ~~protection~~ shall result in the immediate suspension of license, which suspension shall
22 be effective as of the date of said failure to maintain said ~~liability~~ insurance coverage
23 ~~or liability protection~~ until proof of the required ~~garage liability insurance or liability~~
24 ~~protection~~ is furnished to the commission. Should no proof of insurance ~~or liability~~
25 ~~protection provided by a liability trust fund as authorized by R.S. 22:46(9)(d)~~ be
26 furnished to the commission within thirty days, the license of said such licensee shall
27 be revoked. ~~Recreational products dealers selling all-terrain vehicles shall not be~~
28 ~~required to furnish and keep in force the minimum garage liability insurance~~

1 coverage ~~on all-terrain vehicles offered for sale unless the vehicles are utilized on the~~
2 ~~streets and roadways for demonstration or any other purpose.~~

3 * * *

4 (9)

5 * * *

6 (d) Notwithstanding any other provisions of law to the contrary, any motor
7 vehicle ~~or recreational products~~ dealer holding a license hereunder shall not be
8 required to obtain a license as a motor vehicle lessor, used motor vehicle dealer, or
9 specialty vehicle dealer or converter, when modifying or selling those vehicles ~~or~~
10 ~~products~~ he is duly franchised and licensed to sell, provided such operations are
11 conducted from the location from which ~~said~~ such motor vehicle ~~or recreational~~
12 ~~products~~ dealer is licensed to do business.

13 * * *

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

17 * * *

18 (4) All used motor vehicle facilities licensed by the commission shall furnish
19 ~~evidence that they currently have garage liability insurance or liability protection~~
20 ~~provided by a liability trust fund as authorized by R.S. 22:46(9)(d) covering their~~
21 ~~places of business. The required insurance policy or liability protection shall have~~
22 ~~limits of not less than one hundred thousand dollars for bodily injury to one person,~~
23 ~~three hundred thousand dollars per accident, and fifty thousand dollars for property~~
24 ~~damage. in their application for license pursuant to this Chapter evidence the~~
25 applicant has insurance covering its place of business and its operation that complies
26 with the financial responsibility laws of this state and as determined by the applicant
27 and its insurance agent, that is necessary to provide coverage to the place and nature
28 of the business sought to be licensed to protect the applicant and the consumers of
29 this state. Said insurance ~~or liability protection~~ shall be maintained throughout the

1 period of licensure. Failure to maintain such insurance ~~or liability protection~~ shall
 2 result in the immediate suspension of license, which suspension shall be effective as
 3 of the date of said failure to maintain ~~said liability~~ such insurance coverage ~~or~~
 4 ~~liability protection~~ until proof of the required ~~garage liability~~ insurance ~~or liability~~
 5 ~~protection~~ is furnished to the commission. Should no proof of insurance ~~or liability~~
 6 ~~protection provided by a liability trust fund as authorized by R.S. 22:46(9)(d)~~ be
 7 furnished to the commission within thirty days, the license of ~~said~~ such licensee shall
 8 be revoked. ~~Recreational product dealers selling all-terrain vehicles shall not be~~
 9 ~~required to furnish and keep in force the minimum garage liability insurance~~
 10 ~~coverage on all-terrain vehicles offered for sale unless the vehicles are utilized on the~~
 11 ~~streets and roadways for demonstration or any other purpose.~~

* * *

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

* * *

16 (5) All motor vehicle lessors ~~shall furnish evidence that they currently have~~
 17 ~~garage liability or other general liability insurance covering their place of business.~~
 18 ~~The policy must have limits of not less than one hundred thousand dollars for bodily~~
 19 ~~injury to one person, three hundred thousand dollars per accident and fifty thousand~~
 20 ~~dollars for property damage. in their application for license pursuant to this Chapter~~
 21 ~~shall include evidence the applicant has insurance covering its place of business and~~
 22 ~~its operation that complies with the financial responsibility laws of this state and as~~
 23 ~~determined by the applicant and its insurance agent, that is necessary to provide~~
 24 ~~coverage to the place and nature of the business sought to be licensed to protect the~~
 25 ~~applicant and the consumers of this state. Said Such insurance must be maintained~~
 26 throughout the period of licensure. Failure to maintain such insurance shall result
 27 in the immediate suspension of license, which suspension shall be effective as of the
 28 date of said failure to maintain ~~said liability~~ such insurance coverage until proof of
 29 the required ~~garage liability~~ insurance is furnished to the commission. Should no

1 proof of insurance be furnished to the commission within thirty days, the license of
2 ~~said~~ such licensee shall be revoked.

3 * * *

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

6 * * *

7 (5) All specialty vehicle dealers shall furnish evidence ~~that they currently~~
8 ~~have garage liability insurance covering their place of business. The policy must~~
9 ~~have limits of not less than one hundred thousand dollars for bodily injury to one~~
10 ~~person, three hundred thousand dollars per accident and fifty thousand dollars for~~
11 ~~property damage.~~ in their application for license pursuant to this Chapter evidence
12 the applicant has insurance covering its place of business and its operation that
13 complies with the financial responsibility laws of this state and as determined by the
14 applicant and its insurance agent, that is necessary to provide coverage to the place
15 and nature of the business sought to be licensed to protect the applicant and the
16 consumers of this state. Said insurance must be maintained throughout the period of
17 licensure. Failure to maintain such insurance shall result in the immediate
18 suspension of license, which suspension shall be effective as of the date of said
19 failure to maintain ~~said liability~~ such insurance coverage until proof of the required
20 ~~garage liability~~ insurance is furnished to the commission. If no proof of insurance
21 is furnished to the commission within thirty days, the license of ~~said~~ such licensee
22 shall be revoked.

23 * * *

24 N. Any person who sells or offers to sell new motor vehicles, recreational
25 products, or specialty vehicles, or leases, rents, or offers to lease or rent new motor
26 vehicles, recreational products, or specialty vehicles, or conducts and designs
27 advertising, participates in special sales events on behalf of licensees, and which is
28 not a licensee of the commission shall, nonetheless, be subject to the provisions of

1 Chapter 6 of Title 32 and the rules and regulations of the commission ~~which pertain~~
2 ~~to the regulation of advertising.~~

3 §1255. Fees; penalties

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

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

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

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

15 (4) The fee for ~~motor vehicle sales and shows at off-site locations~~ auto shows,
16 trade shows, and expositions shall not exceed five hundred dollars.

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

19 * * *

20 §1260. Penalties; other relief

21 * * *

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

28 F. Upon the failure of any person to comply with any order of the
29 commission issued as a result of a violation of this Chapter, or a rule or regulation

1 adopted by the commission, the commission is authorized to file civil proceedings
 2 to enforce its order in the Twenty-Fourth Judicial District Court for the parish of
 3 Jefferson by rule to show cause conducted pursuant to the relevant provisions of the
 4 Louisiana Code of Civil Procedure. The commission shall be entitled to recover
 5 from such party all costs of the proceeding, including but not limited to court costs,
 6 discovery costs, and reasonable attorney fees incurred by the commission in
 7 enforcing its order.

8 §1261. Unauthorized acts

9 It shall be a violation of this Chapter:

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

12 (a) To induce or coerce, or attempt to induce or coerce, any licensee ~~or~~
 13 ~~specialty vehicle dealer:~~

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

17 * * *

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

23 * * *

24 (d) To unfairly, without just cause and due regard to the equities of said
 25 dealer, cancel the franchise of any ~~motor vehicle dealer~~ licensee. Failure to meet
 26 performance standards based on a survey of sales penetration in a regional, national,
 27 territorial, or other geographic area shall not be the sole cause for cancellation of a
 28 franchise. The nonrenewal of a franchise or selling agreement with said dealer or his
 29 successor without just provocation or cause, or the refusal to approve a qualified

1 transferee or qualified successor to the dealer-operator as provided for in the
 2 franchise or selling agreement, or solely for failure to meet performance standards
 3 based on a survey of sales penetration in a regional, national, territorial, or other
 4 geographic area, shall be deemed an evasion of this Paragraph and shall constitute
 5 an unfair cancellation, regardless of the terms or provisions of such franchise or
 6 selling agreement. However, at least ~~ninety days~~ ninety-days notice ~~must~~ shall be
 7 given to the dealer of any cancellation or nonrenewal of a franchise except for a
 8 cancellation arising out of the financial default of the motor vehicle dealer or
 9 fraudulent activity of the dealer principal which results in the conviction of a crime
 10 punishable by imprisonment. The provisions of this Subsection relating to
 11 performance standards shall not apply to recreational products dealers.

12 (e) To refuse to extend to a ~~motor vehicle dealer~~ licensee the privilege of
 13 determining the mode or manner of available transportation facility that said dealer
 14 desires to be used or employed in making deliveries of ~~new motor~~ vehicles to him
 15 or it.

16 * * *

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

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

25 (i) To unreasonably withhold consent to the sale, transfer, or exchange of the
 26 franchise to a qualified transferee capable of being licensed as a ~~new motor vehicle~~
 27 dealer in this state, provided the transferee meets the criteria generally applied by the

1 manufacturer in approving new ~~motor vehicle~~ dealers and agrees to be bound by all
2 the terms and conditions of the standard franchises.

3 * * *

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

10 * * *

11 (ii) After any of the conditions have been met under Subitems (aa) and (bb)
12 ~~above, of this Item~~ the commission shall allow the manufacturer of ~~new motor~~
13 ~~vehicles~~ to compete with ~~new motor vehicle dealers~~ licensees of the same-line
14 makes, models, or classifications under an agreement or franchise from said
15 manufacturer for longer than two years when, in the discretion of the commission,
16 the best interest of the manufacturer, consuming public, and ~~new motor vehicle~~
17 ~~dealer~~ licensees are best served.

18 * * *

19 (n) To fail to designate and provide to the commission in writing the
20 community or territory assigned to a ~~motor vehicle dealer~~ licensee.

21 * * *

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

26 * * *

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

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

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

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

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

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

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

19 * * *

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

22 * * *

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

27 * * *

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

4 * * *

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

12 * * *

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

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

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

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

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

25 (e) To pay a fee to any person in return for the solicitation, procurement, or
26 production by that person of prospective lessees of ~~motor~~ vehicles, unless the person
27 receiving the fee is a lease facilitator who holds a valid license as provided by this
28 Chapter and a valid appointment from the motor vehicle lessor as provided by R.S.
29 32:1266(B)(1). The fees prohibited by this Subparagraph shall not include amounts

1 paid to a ~~motor vehicle~~ dealer as part of the consideration for the sale or assignment
2 of a lease or leased vehicle or other amounts paid to the ~~motor vehicle~~ dealer who
3 transfers the title on the vehicle or assigns the lease contract to the motor vehicle
4 lessor.

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

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

15 (4) For a lease facilitator:

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

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

23 * * *

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

27 * * *

1 (5) For a broker:

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

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

8 * * *

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

12 * * *

13 (7) For any employee of a ~~motor vehicle dealer, specialty vehicle dealer, or~~
14 ~~used motor vehicle dealer licensed by the commission,~~ licensee while acting in the
15 scope of his employment, to accept any payment, commission, fee, or compensation
16 of any kind from any person other than the employing ~~dealer~~ licensee, unless ~~said~~
17 such payment is fully disclosed to and approved by the employing ~~dealer~~ licensee.

18 §1261.1. Indemnification of franchised dealers

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

1 §1262. Warranty; compensation; audits of dealer records

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

7 * * *

8 B.

9 * * *

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

13 * * *

14 §1263. Motor vehicle repairs

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

24 §1264. Damage disclosure

25 A. Whenever a new ~~motor~~ vehicle subject to regulation pursuant to this
26 Chapter is sold to any person, the seller shall notify the purchaser of any body
27 damage or mechanical damage which the vehicle has sustained that exceeds six
28 percent of the manufacturer's suggested retail price or, in the case of recreational
29 vehicles, six percent of the manufacturer's wholesale price. Such notice shall be in

1 writing and a copy thereof shall be delivered to the purchaser prior to or
2 simultaneous with transfer of the vehicle title.

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

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

11 * * *

12 §1268. Requirements upon termination; penalty; indemnity

13 A.(1) In the event the licensee ceases to engage in the business of being a
14 motor vehicle, recreational products, or specialty vehicle dealer, or ceases to sell a
15 particular make of motor vehicle, recreational product, or specialty vehicle and after
16 notice to the manufacturer, converter, distributor, or representative by ~~registered or~~
17 certified mail or commercial delivery service with verification of receipt, within
18 thirty days of the receipt of the notice by the manufacturer, converter, distributor, or
19 representative, the manufacturer, converter, distributor, or representative shall
20 repurchase:

21 (a) All new motor vehicle, recreational product, and specialty vehicles of the
22 current and last prior model year delivered to the licensee and parts on hand that
23 have not been damaged or substantially altered to the prejudice of the manufacturer
24 while in the possession of the licensee. As to recreational products dealers, the
25 repurchase of parts shall be limited to those listed in the manufacturer's price book.
26 The motor vehicle, recreational product, and specialty vehicles and parts shall be
27 repurchased at the cost to the licensee which shall include without limitation freight

1 and advertising costs, less all allowances paid to the dealer, except that new
2 automobiles shall be purchased on the schedule as follows:

3 * * *

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

8 (2) The manufacturer or converter shall make the required repurchase after
9 the dealer terminates his franchise and within thirty days for motor and speciality
10 vehicle dealers and sixty days for recreational products dealers of the submission to
11 it, by ~~registered~~ or certified mail, return receipt requested, or commercial delivery
12 service with verification of receipt, of a final inventory of motor vehicles and parts
13 on hand.

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

19 * * *

20 Section 2. R.S. 32:1268.1 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Arnold

HB No. 1222

Abstract: Provides relative to the distribution and sale of motor vehicles.

Proposed law provides for the definition of "vehicle" and "dealer".

Present law (R.S. 32:1254(A)(19)) provides for licensing of auto shows including promoters and nonresident exhibitors.

Proposed law retains present law but includes trade shows and exhibitions.

Present law (R.S. 32:1254(B)(1)) provides that if an application is denied, the license fee is returned to the applicant.

Proposed law instead makes the license fee nonrefundable.

Present law (R.S. 32:1254(B)(1)) provides for staggering the date of issuance of licenses based on geographical location of the licensee.

Proposed law retains present law with respect to staggering the dates of license issuance but beginning Jan. 1, 2011, the duration of the licenses will be staggered from one to two years based on geographical location of the licensee.

Present law (R.S. 32:1254(B)(2)) provides that the license of a recreational products dealer shall expire each year on Dec. 31.

Proposed law instead provides that a license of a recreational products dealer expires on Dec. 31, 2010.

Present law (R.S. 32:1254(D)(7)) requires a manufacturer or a convertor or secondary manufacturer to immediately file with the commission a copy of a franchise with a motor vehicle dealer, recreational products dealer, or speciality vehicle dealer.

Proposed law retains present law but adds a distributor and wholesaler as to the filing requirement.

Present law (R.S. 32:1254(C)(9), (E)(7), (F)(4), (J)(5), and (L)(5)) requires all motor vehicle or recreational products dealers, used motor vehicle facilities, motor vehicle lessors, speciality vehicle dealers to furnish evidence that they currently have garage liability insurance or liability protection provided by a liability trust fund covering their place of business. Provides that the required insurance policy or liability protection shall have limits of not less than \$100,000 for bodily injury to one person, \$300,000 per accident, and \$50,000 for property damage.

Present law (R.S. 32:1254(C)(9), (E)(7), and (F)(4)) provides that recreational products dealers selling all-terrain vehicles shall not be required to furnish and keep in force the minimum garage liability insurance coverage on all-terrain vehicles offered for sale unless the vehicles are utilized on the streets and roadways for demonstration or any other purpose.

Proposed law instead requires all motor vehicle or recreational products dealers, used motor vehicle facilities, motor vehicle lessors, speciality vehicle dealers to carry insurance that covers its place of business and that complies with the financial responsibility laws of this state as determined by the applicant and its insurance agent.

Present law (R.S. 32:1254(E)(9)(d)) provides that a motor vehicle or recreational products dealer shall not be required to obtain a license as a motor vehicle lessor, used motor vehicle dealer, or speciality vehicle dealer or converter, when modifying or selling those vehicles or products he is licensed to sell, provided it is conducted at his licensed place of business.

Proposed law retains present law but exempts recreational products dealers from this provision.

Present law (R.S. 32:1254(N)) provides that non-licensees shall be subject to the provisions of present law.

Proposed law retains present law but includes persons conducting or designing advertising or participating in special sales events on behalf of licensees.

Present law (R.S. 32:1255(A)) provides for a maximum on fees for each licensee.

Proposed law retains present law but specifies that these fees shall not exceed the maximum for each year covered by the license.

Present law (R.S. 32:1255(A)(4)) provides for a fee of \$500 for motor vehicle sales and shows at off-site locations.

Proposed law applies the fee to auto shows, trade shows, and expositions.

Proposed law (R.S. 32:1260(E)) authorizes the commission 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 repurchase requirements.

Proposed law (R.S. 32:1260(F)) provides that upon the failure of any person to comply with any order of the commission, or a rule or regulation adopted by the commission, the commission is authorized to file civil proceedings to enforce its order in the 24th JDC by rule to show cause. Further provides that the commission shall be entitled to recover from such party all costs of the proceeding, including court costs, discovery costs, and reasonable attorney fees incurred by the commission in enforcing its order.

Present law (R.S. 32:1261) provides that it be deemed an unauthorized act if a manufacturer, a distributor, a wholesaler, distributor branch, factory branch, converter or officer, agent, or other representative unfairly cancels the franchise of any motor vehicle dealer based on performance standards.

Proposed law changes present law to the cancellation of a franchise of any licensee but exempts recreational products dealers from the performance standards of present law.

Present law (R.S. 32:1261.1) provides for indemnification for judgments arising out of alleged defective or negligent manufacture, assembly, or design of motor vehicles, parts, or accessories.

Proposed law retains present law but includes speciality vehicles and recreational products.

Present law (R.S. 32:1263) provides that suppliers of mechanical repairs and services for motor vehicles to provide each consumer with an itemized bill.

Proposed law retains present law but clarifies the bill is for any vehicle subject to regulation pursuant to present law.

Present law (R.S. 32:1264) provides that whenever a new motor vehicle 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 6% of the manufacturer's suggested retail price.

Proposed law changes present law to include that any new vehicle subject to regulation by the board be subject to present law and further requires that a seller of a new recreational vehicle to notify purchaser of any body damage or mechanical damage that exceeded 6% of the manufacturer's wholesale price.

Proposed law provides that replacement of a new recreational vehicle's instrument panels, appliances, furniture, cabinetry, televisions, audio equipment, or similar residential components shall not be deemed damaged if such items are replaced with original manufacturer's parts and materials.

Present law (R.S. 32:1268) provides for termination requirements for a motor vehicle and speciality vehicle dealer regarding repurchase of parts and products.

Proposed law retains present law but includes recreational products dealers and recreational products respectively.

Present law provides the manufacturer or converter to make the required repurchase after the dealer terminates his franchise within 30 days of notification.

Proposed law retains present law but provides repurchase within 30 days for motor and speciality vehicle dealers and 60 days for recreational products dealers.

Present law (R.S. 32:1268.1) provides for provisions of manufacturer mandatory repurchases when the dealers licensed by the commission cease to do business in the state.

Proposed law deletes present law.

(Amends R.S. 32:1252(27), 1254(A)(19), (B), (C)(intro. para.) and (9) and (10), (D)(intro. para.) and (7), (E)(7) and (9)(d), (F)(intro. para.) and (4), (J)(intro. para.) and (5), (L)(intro. para.) and (5), and (N), 1255(A), 1261(1)(a)(intro. para.) and (i), (b), (d), (e), (g)-(i), (k)(i)(intro. para.) and (ii), (n), and (p), (2)(intro. para.), (a)-(e), (f)(intro. para.), (ii), and (iv), (g), and (i), (3), (4)(a), (b), and (d), (5)(a), (b), and (d), and (7), 1261.1, 1262(A)(1) and (B)(3), 1263, 1264, and 1268(A)(1)(intro. para.), (a), and (d), and (2), and (B); Adds R.S. 32:1252(51) and (52) and 1260(E) and (F); Repeals R.S. 32:1268.1)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Exempted recreational products dealers from certain provisions of unauthorized acts.
2. Required a seller of a new recreational vehicle to notify purchaser of any body damage or mechanical damage that exceeded 6% of the manufacturer's wholesale price.
3. Provided that replacement of a new recreational vehicle's instrument panels, appliances, furniture, cabinetry, televisions, audio equipment, or similar residential components shall not be deemed damaged if such items are replaced with original manufacturer's parts and materials.
4. Provided for the repurchase of parts of recreational products dealers upon termination of an agreement.
5. Required the manufacturer or converter to make, after receipt of notification, the repurchase within 30 days for motor and speciality vehicle dealers and 60 days for recreational products dealers.
6. Restored present law regarding motor vehicle dealers, speciality dealers, and recreational products dealers.