

Regular Session, 2012

SENATE BILL NO. 276

BY SENATOR MARTINY AND REPRESENTATIVE PONTI

COMMERCIAL REGULATIONS. Provides for distribution and sale of motorcycles and all-terrain vehicles. (8/1/12)

1 AN ACT
2 To amend and reenact R.S. 32:1257.1 and 1261 and to enact R.S. 32:1252(52) through (60),
3 1262(C), 1267(C), 1268(D), and Part II of Chapter 6 of Title 32 of the Louisiana
4 Revised Statutes of 1950, to be comprised of R.S. 32:1270 through 1270.10, relative
5 to motorcycles and all-terrain vehicles; to provide for terms, conditions, and
6 procedures; to provide for definitions; to provide for the establishment of a new
7 motorcycle or all-terrain vehicle dealership or the relocation of an existing
8 motorcycle or all-terrain vehicle dealership; to provide for unauthorized acts; to
9 provide for warranty agreements and applications; to provide for the sale of certain
10 motorcycles or all-terrain vehicles; to provide relative to the leasing of motorcycles
11 or all-terrain vehicles; to provide for the succession of motorcycle or all-terrain
12 vehicle dealer; to provide relative to conflicts of laws; to provide for indemnification
13 of motorcycle and all-terrain vehicle franchised dealers; and to provide for related
14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 32:1257.1 and 1261 are hereby amended and reenacted and R.S.
17 32:1252(52) through (60), 1262(C), 1267(C), 1268(D), and Part II of Chapter 6 of Title 32

1 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 32:1270 through 1270.10
2 are hereby enacted to read as follows:

3 §1252. Definitions

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

7 * * *

8 **(52) "Motorcycle or all-terrain vehicle dealer" means any person who,**
9 **for a commission or with intent to make a profit or gain of money or other thing**
10 **of value, buys, sells, brokers, exchanges, auctions, offers, or attempts to**
11 **negotiate a sale or exchange of an interest in motorcycles or all-terrain vehicles**
12 **and who is engaged wholly or in part in the business of buying and selling**
13 **motorcycles or all-terrain vehicles in the state of Louisiana and who holds a**
14 **license as a recreational products dealer under the provisions of this Chapter.**

15 **(a) The term shall also include anyone not licensed under Chapter 6 of**
16 **Title 32 of the Louisiana Revised Statutes of 1950, who sells motorcycles or all-**
17 **terrain vehicles and who rents on a daily basis motorcycles or all-terrain**
18 **vehicles, not of the current year or immediate prior year models, that have been**
19 **titled previously to an ultimate purchaser.**

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

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

24 **(ii) Public officers while performing their official duties.**

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

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

29 **(v) Insurance companies.**

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

5 (53)(a) "Motorcycle or all-terrain vehicle lessor" shall mean any person,
6 not excluded by Subparagraph (b) of this Paragraph, engaged in the motorcycle
7 or all-terrain vehicle leasing or rental business and who holds a license as a
8 motor vehicle lessor under the provisions of this Chapter. It shall also include
9 a subsidiary of any such entity.

10 (b) The term "motorcycle or all-terrain vehicle lessor" does not include
11 any of the following:

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

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

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

18 (iv) Financial institutions engaged in the leasing of motorcycles or all-
19 terrain vehicles.

20 (c) Any motorcycle or all-terrain vehicle lessor who rents on a daily basis
21 motorcycles or all-terrain vehicles not of the current year or immediate prior
22 year models that have been titled previously to an ultimate purchaser, and who
23 is otherwise not required to obtain a license under this Chapter, shall be subject
24 to the regulation of the Louisiana Used Motor Vehicle Commission.

25 (54) "Motorcycle or all-terrain vehicle lessor agent" means any natural
26 person, other than a daily rental person, who holds a license as a motor vehicle
27 lessor agent under the provisions of this Chapter and is employed by a
28 motorcycle or all-terrain vehicle lessor licensed by the commission whose duties
29 include the leasing, renting or offering for lease or rent motorcycles or all-

1 terrain vehicles on behalf of said motorcycle or all-terrain vehicle lessor.

2 (55) "Motorcycle or all-terrain vehicle lessor franchisor" means any
3 person who holds a license as a motor vehicle lessor franchisor under the
4 provisions of this Chapter and grants a franchise to any person granting the
5 right to lease or rent a motorcycle or all-terrain vehicle under its trade name,
6 trademark, or service mark or to sell used motorcycle or all-terrain vehicles
7 formerly a part of its rental fleet.

8 (56) "Motorcycle or all-terrain vehicle salesman" means any natural
9 person employed by a licensee of the commission whose duties include the
10 selling, leasing, or offering for sale or lease, financing or insuring motorcycle or
11 all-terrain vehicles on behalf of said licensee and who holds a motor vehicle
12 salesman license under the provisions of this Chapter.

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

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

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

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

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

27 (ii) Public officers while performing their official duties.

28 (iii) Employees of persons, corporations, or associations enumerated in
29 the definition of "used motorcycle or all-terrain vehicle dealer" when engaged

1 in the specific performance of their duties as such employees.

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

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

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

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

15 * * *

16 §1257.1. Establishment of new recreational products dealerships or relocations;
17 protests; procedure

18 ~~A.(1) Whenever the commission receives an application for a recreational~~
19 ~~products dealer's license which would add a new motorcycle or all-terrain vehicle~~
20 ~~dealership, it shall first notify the existing licensed motorcycle or all-terrain vehicle~~
21 ~~dealership or dealerships selling the same-line makes, models, or classifications if~~
22 ~~the new dealership's proposed location is within the existing dealer's area of~~
23 ~~responsibility. Any same-line makes, models, or classifications dealership whose~~
24 ~~area of responsibility includes the location of the proposed new motorcycle or all-~~
25 ~~terrain vehicle dealership may object to the granting of the license.~~

26 ~~(2) Whenever the commission receives an application for a recreational~~
27 ~~products dealer's license which would relocate an existing motorcycle or all-terrain~~
28 ~~vehicle dealership, it shall first notify the existing licensed motorcycle or all-terrain~~
29 ~~vehicle dealership or dealerships selling the same-line makes, models, or~~

1 classifications if the dealership's proposed new location is within the existing dealer's
2 area of responsibility. ~~The existing same-line makes, models, or classifications~~
3 ~~dealership or dealerships shall have the right to object to the granting of the license~~
4 ~~only if the proposed relocation is within a radius of seven miles of its facility.~~
5 ~~However, without regard to distance, whenever the commission receives an~~
6 ~~application for the relocation of a motorcycle or all-terrain vehicle dealership which~~
7 ~~would add an additional franchise to an existing same-line makes, models, or~~
8 ~~classifications dealership's area of responsibility, the affected dealership shall have~~
9 ~~the right to object.~~

10 (3) ~~The objection shall be in writing and shall be received by the commission~~
11 ~~within a fifteen-day period after receipt of the notice. The fifteen-day objection~~
12 ~~period shall be waived upon written notification to the commission from all licensees~~
13 ~~entitled to object that the licensees have no objections to the proposed change or~~
14 ~~addition for which the notice of intent was issued. If timely objection is lodged, and~~
15 ~~prior to the issuance of the license, the commission shall hold a hearing within thirty~~
16 ~~days after receipt of the objection and issue its decision within ninety days after date~~
17 ~~of the hearing. Notice of hearing and an opportunity to participate therein shall be~~
18 ~~given to the manufacturer or distributor, the applicant for the license as a motorcycle~~
19 ~~or all-terrain vehicle dealer, and to the protesting dealership or dealerships.~~

20 (4) ~~Whenever the commission receives an objection pursuant to the~~
21 ~~provisions of Paragraph (1) of this Subsection, the commission shall consider the~~
22 ~~following and may consider any other relevant factors in determining whether there~~
23 ~~is good cause to issue a license:~~

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

25 (b) ~~The financial impact on both the applicant and the existing dealership or~~
26 ~~dealerships.~~

27 (c) ~~Whether the existing motorcycle or all-terrain vehicle dealerships of the~~
28 ~~same-line makes, models, or classifications in the dealership's area of responsibility~~
29 ~~are providing adequate representation, competition, and convenient consumer care~~

1 ~~for the motorcycle or all-terrain vehicles of the same-line makes, models, or~~
2 ~~classifications located within that area.~~

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

5 ~~B.~~(1) A. Whenever the commission receives an application for a recreational
6 products dealer's license which would add a new marine dealership, it shall first
7 notify the existing licensed marine dealership or dealerships selling the same-line
8 makes, models, or classifications if the new dealership's proposed location is within
9 the existing dealer's area of responsibility. Any same-line makes, models, or
10 classifications dealership whose area of responsibility includes the location of the
11 proposed new marine dealership may object to the granting of the license.

12 ~~(2) B.~~ Whenever the commission receives an application for a recreational
13 products dealer's license which would relocate an existing marine dealership, it shall
14 first notify the existing licensed marine dealership or dealerships selling the same-
15 line makes, models, or classifications if the dealership's proposed new location is
16 within the existing dealer's area of responsibility. The existing same-line makes,
17 models, or classifications dealership or dealerships shall have the right to object to
18 the granting of the license only if the proposed relocation is within a radius of seven
19 miles of its facility. However, without regard to distance, whenever the commission
20 receives an application for the relocation of a marine dealership which would add an
21 additional franchise to an existing same-line makes, models, or classifications
22 dealership's area of responsibility, the affected dealership shall have the right to
23 object.

24 ~~(3) C.~~ The objection shall be in writing and shall be received by the
25 commission within a fifteen-day period after receipt of the notice. The fifteen-day
26 objection period shall be waived upon written notification to the commission from
27 all licensees entitled to object that the licensees have no objections to the proposed
28 change or addition for which the notice of intent was issued. If timely objection is
29 lodged, and prior to the issuance of the license, the commission shall hold a hearing

1 within thirty days after receipt of the objection and issue its decision within ninety
2 days after date of the hearing. Notice of hearing and an opportunity to participate
3 therein shall be given to the manufacturer or distributor, the applicant for the license
4 as a marine dealer, and to the protesting dealership or dealerships.

5 ~~(4)~~ **D.** Whenever the commission receives an objection pursuant to the
6 provisions of ~~Paragraph (1) of this Subsection~~ **A of this Section**, or whenever the
7 commission receives an objection pursuant to the assignment of the marine dealer's
8 area of principal sales and service responsibility, the commission shall consider the
9 following and may consider any other relevant factors in determining whether there
10 is good cause to approve or reject the assignment of the marine dealer's area of
11 principal sales and service responsibility, or to issue a license:

12 ~~(a)~~ **(1)** Whether the community or territory can support an additional
13 dealership.

14 ~~(b)~~ **(2)** The financial impact on both the applicant and the existing dealership
15 or dealerships.

16 ~~(c)~~ **(3)** Whether the existing marine dealerships of the same-line makes,
17 models, or classifications in the dealership's area of responsibility are providing
18 adequate representation, competition, and convenient consumer care for the marine
19 products of the same-line makes, models, or classifications located within that area.

20 ~~(d)~~ **(4)** Whether the issuance of the license would increase competition, be
21 in the public interest, or both.

22 ~~(5)~~ **E.** In disputes between the marine dealers and marine manufacturers and
23 distributors regarding the execution of an agreement that would add a new same-line
24 make marine dealership or would add the same product line regardless of brand
25 name within the area of responsibility of an existing marine product line dealer, the
26 name brand of the boat determines whether a dealer may enter into a franchise or
27 selling agreement for a particular boat package or boat package line. The marine
28 motor, marine engine, boat trailer, or any accessory made a part of a boat package
29 shall not be the subject of, or a consideration in, an area of responsibility dispute for

1 violation involving the boat package.

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

10 * * *

11 §1261. Unauthorized acts

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

13 * * *

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

18 * * *

19 §1262. Warranty; compensation; audits of dealer records

20 * * *

21 **C. The provisions of this Section shall not apply to a dealer,**
22 **manufacturer, distributor, wholesaler, distributor branch, or factory branch of**
23 **motorcycles or all-terrain vehicles, or any officer, agent, or representative**
24 **thereof.**

25 * * *

26 §1267. Succession; right of first refusal

27 * * *

28 **C. The provisions of this Section shall not apply to the succession of any**
29 **motorcycle dealer or all-terrain vehicle dealer.**

1 §1268. Requirements upon termination; penalty; indemnity

2 * * *

3 **D. Notwithstanding any provision of law to the contrary, the provisions**
4 **of this Section shall not apply to motorcycle dealers or all-terrain vehicle**
5 **dealers.**

6 * * *

7 **PART II. PROVISIONS SPECIFIC TO MOTORCYCLES AND ALL-TERRAIN**
8 **VEHICLES**

9 **§1270. Establishment of new motorcycle or all-terrain vehicle dealerships or**
10 **relocations; protests; procedure**

11 **A. Whenever the commission receives an application for a recreational**
12 **products dealer's license which would add a new motorcycle or all-terrain**
13 **vehicle dealership, it shall first notify the existing licensed motorcycle or all-**
14 **terrain vehicle dealership or dealerships selling the same-line makes, models,**
15 **or classifications if the new dealership's proposed location is within the existing**
16 **dealer's area of responsibility. Any same-line makes, models, or classifications**
17 **dealership whose area of responsibility includes the location of the proposed**
18 **new motorcycle or all-terrain vehicle dealership may object to the granting of**
19 **the license.**

20 **B. Whenever the commission receives an application for a recreational**
21 **products dealer's license which would relocate an existing motorcycle or all-**
22 **terrain vehicle dealership, it shall first notify the existing licensed motorcycle**
23 **or all-terrain vehicle dealership or dealerships selling the same-line makes,**
24 **models, or classifications if the dealership's proposed new location is within the**
25 **existing dealer's area of responsibility. The existing same-line makes, models,**
26 **or classifications dealership or dealerships shall have the right to object to the**
27 **granting of the license only if the proposed relocation is within a radius of seven**
28 **miles of its facility. However, without regard to distance, whenever the**
29 **commission receives an application for the relocation of a motorcycle or all-**

1 terrain vehicle dealership which would add an additional franchise to an
2 existing same-line makes, models, or classifications dealership's area of
3 responsibility, the affected motorcycle or all-terrain vehicle dealership shall
4 have the right to object.

5 C. The objection shall be in writing and shall be received by the
6 commission within a fifteen-day period after receipt of the notice. The fifteen-
7 day objection period shall be waived upon written notification to the
8 commission from all licensees entitled to object that the licensees have no
9 objections to the proposed change or addition for which the notice of intent was
10 issued. If timely objection is lodged, and prior to the issuance of the license, the
11 commission shall hold a hearing within thirty days after receipt of the objection
12 and issue its decision within ninety days after date of the hearing. Notice of
13 hearing and an opportunity to participate therein shall be given to the
14 manufacturer or distributor, the applicant for the license as a motorcycle or all-
15 terrain vehicle dealer, and to the protesting motorcycle or all-terrain vehicle
16 dealership or dealerships.

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

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

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

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

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

3 **§1270.1. Unauthorized acts**

4 **It shall be a violation of this Part:**

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

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

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

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

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

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

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

1 pending a commission hearing or pending litigation.

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

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

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

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

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

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

1 **motorcycles or all-terrain vehicles to him or it.**

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

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

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

17 **(h)(i) To sell or offer to sell a new or unused motorcycle or all-terrain**
18 **vehicle directly to a consumer except as provided in this Chapter, or to compete**
19 **with a licensee in the same-line makes, models, or classifications operating**
20 **under an agreement or franchise from the aforementioned manufacturer. A**
21 **manufacturer shall not, however, be deemed to be competing when any one of**
22 **the following conditions are met:**

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

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

28 **(cc) Operating in a bona fide relationship in which a person independent**
29 **of a manufacturer has made a significant investment subject to loss in the**

1 dealership, and can reasonably expect to acquire full ownership of such
2 dealership on reasonable terms and conditions.

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

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

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

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

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

26 (m) To make a change in the area of responsibility described in the
27 franchise agreement or sales and service agreement of a motorcycle or all-
28 terrain vehicle dealer, without the franchisor, converter, or manufacturer
29 giving said motorcycle or all-terrain vehicle dealer and the commission no less

1 than sixty days prior written notice by certified or registered mail.

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

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

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

13 (c) To resort to or use any false or misleading advertisement in
14 connection with his business as such motorcycle or all-terrain vehicle dealer or
15 motorcycle or all-terrain vehicle salesman.

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

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

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

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

29 (ii) That the motorcycle or all-terrain vehicle being offered for trade-in

1 by the purchaser shall not be sold by the motorcycle or all-terrain vehicle dealer
2 until the conditional sale is complete.

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

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

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

25 (g) To pay a fee to any person in return for the solicitation, procurement,
26 or production by that person of prospective purchasers for new and used
27 motorcycles or all-terrain vehicles, except to a motorcycle or all-terrain vehicle
28 salesman licensed under the provisions of this Chapter.

29 (h) To fail to fully and completely explain each charge listed on a retail

1 buyer's order or motorcycle or all-terrain vehicle invoice prior to the purchase
2 of a motorcycle or all-terrain vehicle.

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

11 (j)(i) To fail to disclose to a purchaser in writing on the sales contract,
12 buyer's order, or any other document that the motorcycle or all-terrain vehicle
13 dealer may be participating in finance charges associated with the sale.

14 (ii) To participate in a finance charge that would result in a difference
15 between the buy rate and the contract rate of more than three percentage
16 points.

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

19 (3) For a motorcycle or all-terrain vehicle lessor or motorcycle or all-
20 terrain vehicle lessor agent:

21 (a) To represent and sell as a new motorcycle or all-terrain vehicle any
22 motorcycle or all-terrain vehicle which has been used or intended to be used and
23 operated for leasing and rental purposes.

24 (b) To resort to or use any false or misleading advertising in connection
25 with the business of leasing or renting motorcycles or all-terrain vehicles.

26 (c) To lease, rent, sell, or offer to sell a motorcycle or all-terrain vehicle
27 from a location not licensed for such activity.

28 (d) To rent or lease any motorcycle or all-terrain vehicle which has been
29 located within this state for a period of thirty days or more, unless such

1 motorcycle or all-terrain vehicle has been issued a Louisiana license plate by,
2 and all license fees and taxes have been paid to, this state.

3 (e) To pay a fee to any person in return for the solicitation, procurement,
4 or production by that person of prospective lessees of motorcycles or all-terrain
5 vehicles, unless the person receiving the fee is a lease facilitator who holds a
6 valid license as provided by this Chapter and a valid appointment from the
7 motorcycle or all-terrain vehicle lessor as provided by R.S. 32:1270.6(B)(1). The
8 fees prohibited by this Subparagraph shall not include amounts paid to a
9 motorcycle or all-terrain vehicle dealer as part of the consideration for the sale
10 or assignment of a lease or leased vehicle or other amounts paid to the
11 motorcycle or all-terrain vehicle dealer who transfers the title on the vehicle or
12 assigns the lease contract to the motorcycle or all-terrain vehicle lessor.

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

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

25 (4) For a lease facilitator:

26 (a) To hold himself out to any person as a "leasing company", "leasing
27 agent", "lease facilitator", or similar title, directly or indirectly engaged in the
28 business of a lease facilitator, or otherwise engaged in the solicitation or
29 procurement of prospective lessees for motorcycles or all-terrain vehicles not

1 titled in the name of and registered to the lease facilitator, without holding a
2 valid lease facilitator license and being in compliance with the terms of this
3 Chapter.

4 (b) To sell or offer to sell a new motorcycle or all-terrain vehicle.

5 (c) To accept a fee from a motorcycle or all-terrain vehicle dealer or
6 consumer.

7 (d) To sign a manufacturer's statement of origin to a motorcycle or all-
8 terrain vehicle, accept an assignment of a manufacturer's statement of origin
9 to a motorcycle or all-terrain vehicle, or otherwise assume any element of title
10 to a new motorcycle or all-terrain vehicle.

11 (e) To procure or solicit prospective lessees for or on behalf of any person
12 other than a motorcycle or all-terrain vehicle lessor.

13 (f) To act in the capacity of or engage in the business of a lease facilitator
14 without a valid appointment from a motorcycle or all-terrain vehicle lessor to
15 act on behalf of the motorcycle or all-terrain vehicle lessor in soliciting
16 prospective lease clients or customers as provided by this Chapter.

17 (5) For a broker:

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

24 (b) To sell, or offer to sell, or display a new motorcycle or all-terrain
25 vehicle.

26 (c) To be paid a fee by a motorcycle or all-terrain vehicle dealer.

27 (d) To sign a manufacturer's statement of origin to a motorcycle or all-
28 terrain vehicle, accept an assignment of a manufacturer's statement of origin
29 to a motorcycle or all-terrain vehicle, or otherwise assume any element of title

1 to a new motorcycle or all-terrain vehicle.

2 (e) To act in the capacity of or engage in the business of a broker without
3 a valid license issued as provided by this Chapter and a valid appointment from
4 a motorcycle or all-terrain vehicle lessor to act on behalf of the motorcycle or
5 all-terrain vehicle lessor in soliciting prospective lease clients or customers as
6 provided by this Chapter.

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

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

14 (ii) The selling motorcycle or all-terrain vehicle dealer. The completed
15 copy shall be provided prior to the selling motorcycle or all-terrain vehicle
16 dealer's entering into a purchase agreement with the consumer at the time of
17 delivery.

18 (g) To accept a purchase deposit from any consumer that exceeds two
19 point five percent of the selling price of the motorcycle or all-terrain vehicle
20 described in the brokering agreement.

21 (h) To fail to refund any purchase money, including purchase deposits,
22 upon demand by a consumer at any time prior to the consumer's signing a
23 motorcycle or all-terrain vehicle purchase agreement with a selling motorcycle
24 or all-terrain vehicle dealer of the motorcycle or all-terrain vehicle described
25 in the brokering agreement.

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

29 (i) When the final price of the brokered vehicle exceeds the purchase

1 price listed in the brokering agreement.

2 (ii) When the motorcycle or all-terrain vehicle delivered is not as
3 described in the brokering agreement.

4 (iii) When the brokering agreement expires prior to the customer's being
5 presented with a purchase agreement from a selling motorcycle or all-terrain
6 vehicle dealer arranged through the brokering dealer that contains a purchase
7 price at or below the price listed in the brokering agreement.

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

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

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

16 (m) To fail to advise the consumer, prior to accepting any money, that
17 a full refund will be given if the motorcycle or all-terrain vehicle ordered
18 through the broker is not obtained for the consumer.

19 (6) For any person or other licensee:

20 (a) To modify a franchise during the term of the agreement or upon its
21 renewal if the modification substantially and adversely affects the franchisee's
22 rights, obligations, investment, or return on investment without giving sixty-day
23 written notice of the proposed modification to the licensee and the commission
24 unless the modifications are required by law, court order, or the commission.
25 Within the sixty-day notice period the licensee may file with the commission a
26 complaint for a determination whether there is good cause for permitting the
27 proposed modification. The party seeking to modify or replace an agreement
28 shall demonstrate by a preponderance of the evidence that there is good cause
29 for the modification or replacement. The commission shall schedule a hearing

1 within sixty days to decide the matter. Multiple complaints pertaining to the
2 same proposed modifications shall be consolidated for hearing. The proposed
3 modification may not take effect pending the determination of the matter.

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

7 (i) The reasons for the proposed modification.

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

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

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

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

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

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

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

26 §1270.2. Indemnification of motorcycle and all-terrain vehicle franchised
27 dealers

28 Notwithstanding the terms of any franchise agreement, each
29 manufacturer or converter shall indemnify and hold harmless its franchised

1 motorcycle or all-terrain vehicle dealers against any judgment for damages,
2 including but not limited to court costs and reasonable attorney fees of the
3 motorcycle or all-terrain vehicle dealer, arising out of complaints, claims, or
4 lawsuits including but not limited to strict liability, negligence,
5 misrepresentation, express or implied warranty, or rescission of sale to the
6 extent that the judgment arises out of alleged defective or negligent
7 manufacture, assembly, or design of motorcycles or all-terrain vehicles, parts,
8 or accessories, or other functions by the manufacturer of converter, which are
9 beyond the control of the motorcycle or all-terrain vehicle dealer.

10 §1270.3. Warranty; compensation; audits of motorcycle or all-terrain vehicle
11 dealer records

12 A.(1) It shall be a violation of this Chapter for a manufacturer, a
13 distributor, a wholesaler, distributor branch or factory branch of motorcycles
14 or all-terrain vehicles, or officer, agent, or other representative thereof to fail
15 to adequately and fairly compensate its motorcycle or all-terrain vehicle dealers
16 for labor, parts, and other expenses incurred by such motorcycle or all-terrain
17 vehicle dealer to perform under and comply with a manufacturer's or a
18 distributor's warranty agreement.

19 (2) In no event shall any manufacturer or distributor pay its motorcycle
20 or all-terrain vehicle dealers at a price or rate for warranty work that is less
21 than that charged by the motorcycle or all-terrain vehicle dealer to the retail
22 customers of the motorcycle or all-terrain vehicle dealer for nonwarranty work
23 of like kind.

24 (3) Warranty work includes parts and labor performed.

25 (4) All claims made by the motorcycle or all-terrain vehicle dealer for
26 compensation under this Subsection shall be paid within thirty days after
27 approval and shall be approved or disapproved within thirty days after receipt.
28 When any claim is disapproved, the motorcycle or all-terrain vehicle dealer
29 shall be notified in writing of the grounds for disapproval.

1 **(5) The obligations in this Subsection as they relate to motorcycles or all-**
2 **terrain vehicles may be modified by contract.**

3 **B.(1) Notwithstanding the terms of any franchise agreement, warranty,**
4 **and sales incentive, audits of motorcycle or all-terrain vehicle dealer records**
5 **may be conducted by the manufacturer, distributor, distributor branch, or**
6 **factory branch. Any audit for warranty parts or service compensation shall be**
7 **for the twelve-month period immediately following the date of the payment of**
8 **the claim by the manufacturer or distributor. However, a motorcycle or all-**
9 **terrain vehicle dealer shall not be held liable by virtue of an audit for failure to**
10 **retain parts for a period in excess of six months. Any audit for sales incentives,**
11 **service incentives, rebates, or other forms of incentive compensation shall only**
12 **be for the twelve-month period immediately following the date of the final**
13 **payment to the motorcycle or all-terrain vehicle dealer under a promotion,**
14 **event, program, or activity. In no event shall the manufacturer, distributor,**
15 **distributor branch, or factory branch fail to allow the motorcycle or all-terrain**
16 **vehicle dealer to make corrections to the sales data in less than one hundred**
17 **twenty days from the program period. Additionally, no penalty other than**
18 **amounts advanced on a motorcycle or all-terrain vehicle reported incorrectly**
19 **shall be due in connection with the audit. With respect to motorcycles or all-**
20 **terrain vehicles sold during the time period subject to the audit, but submitted**
21 **incorrectly to the manufacturer, distributor, or wholesale distributor branch**
22 **or factory branch, the motorcycle or all-terrain vehicle dealer shall be charged**
23 **back for the amount reported incorrectly and credited with the amount due, if**
24 **anything, on the actual sale date.**

25 **(2) No claim which has been approved and paid may be charged back to**
26 **the motorcycle or all-terrain vehicle dealer unless it can be shown that one or**
27 **all of the following applies:**

28 **(a) The claim was false or fraudulent.**

29 **(b) The repairs were not properly made.**

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

3 (d) The motorcycle or all-terrain vehicle dealer failed to reasonably
4 substantiate the repair in accordance with reasonable written requirements of
5 the manufacturer or distributor, if the motorcycle or all-terrain vehicle dealer
6 was notified of the requirements prior to the time the claim arose and if the
7 requirements were in effect at the time the claim arose.

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

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

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

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

24 §1270.4. Damage disclosure

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

1 percent of the manufacturer's wholesale price. Such notice shall be in writing
2 and a copy thereof shall be delivered to the purchaser prior to or simultaneous
3 with transfer of the motorcycle or all-terrain vehicle title.

4 B. This Section shall apply to all instances of vehicular body or
5 mechanical damage to motorcycles or all-terrain vehicles and to all actions
6 involving such damage, notwithstanding the application of other codal,
7 statutory, or regulatory provisions, including but not limited to Civil Code
8 Articles 2520 et seq.

9 §1270.5. Sale of water-damaged motorcycles or all-terrain vehicles

10 A. No person shall sell, transfer, or convey any new or used motorcycle
11 or all-terrain vehicle to any person without notifying the buyer or receiver of
12 the motorcycle or all-terrain vehicle in writing of the extent of any water
13 damage from flooding which occurred to the motorcycle or all-terrain vehicle
14 prior to the transaction.

15 B. If a sale, transfer, or conveyance of a new or used motorcycle or all-
16 terrain vehicle occurs in violation of Subsection A of this Section, the person
17 receiving ownership and title to the motorcycle or all-terrain vehicle who is not
18 otherwise aware of the damage at the time of the transaction may bring an
19 action to set aside the transaction within one year from the date of the
20 transaction and receive all monies or other property given as consideration for
21 the motorcycle or all-terrain vehicle less a reasonable assessment for miles
22 driven.

23 C. For the purposes of this Section, a "water-damaged motorcycle or all-
24 terrain vehicle" means any motorcycle or all-terrain vehicle whose power train,
25 computer, or electrical system has been damaged by flooding.

26 §1270.6. Motorcycle or all-terrain vehicle lessors; appointment of motorcycle
27 or all-terrain vehicle lease facilitators

28 A.(1) Except as otherwise provided by this Chapter, a motorcycle or all-
29 terrain vehicle lessor franchisor may not terminate a franchise prior to the

1 expiration of its term, except for good cause. Good cause shall include but not
2 be limited to the failure of the franchisee to comply with any lawful requirement
3 of the franchise, after being given notice thereof, and a reasonable opportunity,
4 which in no event need be more than thirty days, to cure the failure. Nothing
5 herein shall permit the cancellation of a franchise solely for failure to meet
6 performance standards based on a survey of sales penetration in a regional,
7 national, territorial, or other geographic area.

8 (2) If during the period in which the franchise granted by a motorcycle
9 or all-terrain vehicle lessor franchisor is in effect, there occurs any of the
10 following events, which is relevant to the franchise, immediate notice of
11 termination without opportunity to cure shall be reasonable:

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

16 (b) The motorcycle or all-terrain vehicle lessor franchisor and the
17 franchisee agree in writing to terminate the franchise.

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

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

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

28 (3)(a) No motorcycle or all-terrain vehicle lessor franchisor shall fail to
29 renew a franchise unless the franchisor provides the following:

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

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

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

13 **(iv) That upon expiration of the franchise, the franchisor agrees not to**
14 **seek to enforce any covenant of the unrenewed franchisee not to compete with**
15 **the franchisor or franchisees of the franchisor.**

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

19 **B.(1) A motorcycle or all-terrain vehicle lessor may appoint one or more**
20 **lease facilitators licensed pursuant to the terms of this Chapter to represent the**
21 **motorcycle or all-terrain vehicle lessor in obtaining prospective lease customers.**
22 **An appointment complies with the requirements of this Subsection if it is in**
23 **writing, discloses its terms, and otherwise complies with the rules of the**
24 **commission.**

25 **(2) In a lease contract or agreement between a motorcycle or all-terrain**
26 **vehicle lessor and a lessee solicited, procured, or produced by a lease facilitator,**
27 **the motorcycle or all-terrain vehicle lessor shall disclose to the lessee that a fee**
28 **was paid, or will be paid to the lease facilitator for the solicitation, procurement,**
29 **or production of the lessee or the lease. The motorcycle or all-terrain vehicle**

1 lessor shall include the disclosure required by this Paragraph in a prominent
2 position in one or both of the following manners:

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

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

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

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

12 (3) Nothing in this Section shall prohibit a lease facilitator from
13 representing a lessor or lessee in the acquisition of a motorcycle or all-terrain
14 vehicle for the purpose of leasing the motorcycle or all-terrain vehicle to
15 another person.

16 §1270.7. Succession; right of first refusal

17 A. The terms of the franchise notwithstanding, any motorcycle or all-
18 terrain vehicle dealer may appoint by will, or other written instrument, a
19 designated successor to succeed in the ownership interest of the motorcycle or
20 all-terrain vehicle dealer in the dealership upon the death or incapacity of the
21 motorcycle or all-terrain vehicle dealer.

22 B. Unless good cause exists for refusal to honor the succession on the
23 part of the manufacturer or distributor, any designated successor of a deceased
24 or incapacitated motorcycle or all-terrain vehicle dealer of a dealership may
25 succeed to the ownership of the dealership under the existing franchise if:

26 (1) The designated successor gives the manufacturer or distributor
27 written notice of his or her intention to succeed to the ownership of the
28 motorcycle or all-terrain vehicle dealer within sixty days of the motorcycle or
29 all-terrain vehicle dealer's death or incapacity.

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

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

7 **D. If a manufacturer or distributor believes that good cause exists for**
8 **refusing to honor the succession of a deceased or incapacitated motorcycle or**
9 **all-terrain vehicle dealer, the manufacturer or distributor may, not more than**
10 **sixty days following receipt of notice of the designated successor's intent to**
11 **succeed and receipt of such personal or financial data, serve upon the**
12 **designated successor notice of its refusal to honor the succession and of its intent**
13 **to discontinue the existing franchise with the motorcycle or all-terrain vehicle**
14 **dealer not earlier than six months from the date such notice is served.**

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

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

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

25 **H. If a manufacturer or distributor refuses to honor the succession to**
26 **the ownership interest of a deceased or incapacitated owner for good cause, then**
27 **and in such event:**

28 **(1) The manufacturer or distributor shall allow the designated successor**
29 **a reasonable period of time which shall not be less than six months in which to**

1 consummate a sale of the dealership. Any such sale shall be subject to R.S.
2 32:1270.1(1)(c).

3 (2) Upon termination of the franchise pursuant to such refusal, the
4 provisions of R.S. 32:1270.8 shall apply.

5 §1270.8. Requirements upon termination; penalty; indemnity; motorcycle or
6 all-terrain vehicle dealers

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

14 (a) All new motorcycles or all-terrain vehicles of the current and last
15 prior model year delivered to the licensee and parts on hand that have not been
16 damaged or substantially altered to the prejudice of the manufacturer while in
17 the possession of the licensee. As to motorcycle or all-terrain vehicle dealers,
18 the repurchase of parts shall be limited to those listed in the manufacturer's
19 price book. The motorcycle or all-terrain vehicles and parts shall be
20 repurchased at the cost to the licensee which shall include without limitation
21 freight and advertising costs, less all allowances paid to the motorcycle or all-
22 terrain vehicle dealer.

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

29 (c) At fair market value, all special tools and automotive service

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

8 (d) The manufacturer, converter, distributor, or representative shall pay
9 to the motorcycle or all-terrain vehicle dealer the costs of transporting,
10 handling, packing, and loading of motorcycles or all-terrain vehicles, or parts,
11 signs, tools, and equipment subject to repurchase.

12 (2) The manufacturer or converter shall make the required repurchase
13 after the dealer terminates his franchise and within sixty days of the submission
14 to it, by certified mail, return receipt requested, or commercial delivery service
15 with verification of receipt, of a final inventory of motorcycles, all-terrain
16 vehicles, and parts on hand.

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

22 §1270.9. Manufacturer termination of line-make; manufacturer bankruptcy;
23 license; motorcycle or all-terrain vehicle franchise

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

1 **§1270.10. Venue and choice of law for litigation or arbitration; motorcycle or**
2 **all-terrain vehicle**

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

7 Section 2. The Louisiana State Law Institute is hereby directed to redesignate R.S.
8 32:1251 through 1269 of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950 as
9 Part I of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950. Part I shall be
10 entitled "GENERAL PROVISIONS APPLICABLE TO MOTOR VEHICLES AND
11 RECREATIONAL PRODUCTS".

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

DIGEST

Present law provides for the regulation of motor vehicles, speciality vehicles, and recreational products under the governance of the Motor Vehicle Commission ("commission").

Present law provides for definitions governing the regulation of motor vehicles, recreational products, and speciality vehicles.

Proposed law adds the following definitions: "motorcycle or all-terrain vehicle dealer", "motorcycle or all-terrain vehicle lessor", "motorcycle or all-terrain vehicle lessor agent", "motorcycle or all-terrain vehicle lessor franchisor", "motorcycle or all-terrain vehicle salesman", "new motorcycle or all-terrain vehicle", "used motorcycle or all-terrain vehicle", "used motorcycle or all-terrain vehicle dealer", and "used motorcycle or all-terrain vehicle facility".

Proposed law replicates certain provisions of present law in new sections of law and limits the application of such provisions to motorcycles and all-terrain vehicles.

Effective August 1, 2012.

(Amends R.S. 32:1257.1 and 1261; adds R.S. 32:1252(52)-(60), 1262(C), 1267(C), 1268(D), and 1270-1270.10)