

Regular Session, 2012

SENATE BILL NO. 360

BY SENATOR MARTINY AND REPRESENTATIVE PONTI

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

1 AN ACT

2 To amend and reenact R.S. 32:1252(4) and (19), 1261, 1261.1, and 1263, to enact R.S.

3 32:1252(52) through (69), 1262(C), 1264(D), 1267(C), 1268(D), and Parts II, III, and

4 IV of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, to be

5 comprised of R.S. 32:1270 through 1270.30, and to repeal R.S. 32:1257.1,

6 1261(6)(a)(ii), and 1268.1, relative to marine products, motorcycles, all-terrain

7 vehicles, and recreational vehicles; to provide for certain terms, conditions,

8 requirements, and procedures; to provide for definitions; to provide for the

9 establishment of new dealerships and the relocation of existing dealerships; to

10 provide for payment to dealers; to provide for unauthorized acts; to provide for

11 warranty agreements and application thereof; to provide for the sale and leasing of

12 certain marine products, motorcycles, all-terrain vehicles, and recreational vehicles;

13 to provide for the succession of a dealer; to provide for the procedure to terminate

14 a dealership; to provide for the repurchase of certain products, equipment, parts, and

15 tools; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 32:1252(4) and (19), 1261, 1261.1, and 1263 are hereby amended

1 and reenacted and R.S. 32:1252(52) through (69), 1262(C), 1264(D), 1267(C), 1268(D), and
2 Parts II, III, and IV of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 32:1270 through 1270.30 are hereby enacted to read as follows:

4 §1252. Definitions

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

8 * * *

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

15 * * *

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

* * *

1
2 **(52) "Marine product salesman" means any natural person employed**
3 **by a licensee of the commission whose duties include the selling, leasing, or**
4 **offering for sale or lease, financing or insuring marine products on behalf of**
5 **said licensee and who holds a motor vehicle salesman license under the**
6 **provisions of this Chapter.**

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

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

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

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

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

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

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

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

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

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

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

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

17 (58) "Motorcycle or all-terrain vehicle dealer" means any person who,
18 for a commission or with intent to make a profit or gain of money or other thing
19 of value, buys, sells, brokers, exchanges, auctions, offers, or attempts to
20 negotiate a sale or exchange of an interest in motorcycles or all-terrain vehicles
21 and who is engaged wholly or in part in the business of buying and selling
22 motorcycles or all-terrain vehicles in the state of Louisiana and who holds a
23 license as a recreational products dealer under the provisions of this Chapter.

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

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

1 **the following:**

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

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

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

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

9 **(v) Insurance companies.**

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

14 **(59) "Motorcycle or all-terrain vehicle salesman" means any natural**
15 **person employed by a licensee of the commission whose duties include the**
16 **selling, leasing, or offering for sale or lease, financing or insuring motorcycle or**
17 **all-terrain vehicles on behalf of said licensee and who holds a motor vehicle**
18 **salesman under the provisions of this Chapter.**

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

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

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

29 **(b) "Used motorcycle or all-terrain vehicle dealer" shall not include any**

1 **of the following:**

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

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

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

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

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

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

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

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

24 **(65) "Recreational vehicle dealer" means any person who, for a**
25 **commission or with intent to make a profit or gain of money or other thing of**
26 **value, buys, sells, brokers, exchanges, auctions, offers, or attempts to negotiate**
27 **a sale or exchange of an interest in recreational vehicles and who is engaged**
28 **wholly or in part in the business of buying and selling recreational vehicles in**
29 **the state of Louisiana and who holds a license as a recreational products dealer**

1 under the provisions of this Chapter.

2 (a) The term shall also include anyone not licensed under Chapter 6 of
3 Title 32 of the Louisiana Revised Statutes of 1950, who sells recreational
4 vehicles and who rents on a daily basis recreational vehicles, not of the current
5 year or immediate prior year models, that have been titled previously to an
6 ultimate purchaser.

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

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

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

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

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

15 (v) Insurance companies.

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

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

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

28 (68)(a) "Used recreational vehicle dealer" means any person, whose
29 business is to sell, or offer for sale, display, or advertise used recreational

1 vehicles, or any person who holds a license from the commission and is not
2 excluded by Subparagraph (b) of this Paragraph.

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

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

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

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

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

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

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

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

24 * * *

25 §1261. Unauthorized acts

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

27 * * *

28 B. The provisions of this Section shall not apply to a dealer,
29 manufacturer, distributor, wholesaler, distributor branch, factory branch, or

1 converter of marine products, motorcycles or all-terrain vehicles, or
2 recreational vehicles, or any officer, agent, or other representative thereof.

3 §1261.1. Indemnification of franchised dealers

4 A. Notwithstanding the terms of any franchise agreement, each manufacturer
5 or converter shall indemnify and hold harmless its franchised dealers against any
6 judgment for damages, including but not limited to court costs and reasonable
7 attorney fees of the dealer, arising out of complaints, claims, or lawsuits including
8 but not limited to strict liability, negligence, misrepresentation, express or implied
9 warranty, or rescission of sale to the extent that the judgment arises out of alleged
10 defective or negligent manufacture, assembly, or design of motor vehicles, speciality
11 vehicle, recreational product, parts, or accessories, or other functions by the
12 manufacturer of converter, which are beyond the control of the dealer.

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

16 §1262. Warranty; compensation; audits of dealer records

17 * * *

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

22 §1263. Motor vehicle repairs

23 A. Suppliers of mechanical repairs and services for any vehicle subject to
24 regulation pursuant to this Chapter shall provide each consumer with an itemized bill
25 indicating repairs and services performed, parts replaced, or materials used, the total
26 labor charge, and the identity of the mechanic, repairman, or supplier who performed
27 the work. However, nothing in this Section shall prohibit a supplier of mechanical
28 repairs and services from charging a service fee for the use of shop supplies such as
29 rags, fender covers, small amounts of fluid, or other items which are not itemized,

1 provided that such fee does not exceed five percent of the total invoice for
2 mechanical repairs or thirty-five dollars, whichever is less.

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

6 §1264. Damage disclosure

7 * * *

8 **D. The provisions of this Section shall not apply to marine products,**
9 **motorcycle or all-terrain vehicles, or recreational vehicles.**

10 * * *

11 §1267. Succession; right of first refusal

12 * * *

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

15 §1268. Requirements upon termination; penalty; indemnity

16 * * *

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

20 * * *

21 **PART II. PROVISIONS SPECIFIC TO MARINE PRODUCTS**

22 **§1270. Establishment of new marine dealerships or relocations; protests;**
23 **procedure**

24 **A. Whenever the commission receives an application for a recreational**
25 **products dealer's license which would add a new marine dealership, it shall first**
26 **notify the existing licensed marine dealership or dealerships selling the same-**
27 **line makes, models, or classifications if the new dealership's proposed location**
28 **is within the existing dealer's area of responsibility. Any same-line makes,**
29 **models, or classifications dealership whose area of responsibility includes the**

1 location of the proposed new marine dealership may object to the granting of
2 the license.

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

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

26 D. Whenever the commission receives an objection pursuant to the
27 provisions of Subsection A of this Section, or whenever the commission receives
28 an objection pursuant to the assignment of the marine dealer's area of principal
29 sales and service responsibility, the commission shall consider the following and

1 may consider any other relevant factors in determining whether there is good
2 cause to approve or reject the assignment of the marine dealer's area of
3 principal sales and service responsibility, or to issue a license:

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

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

8 (3) Whether the existing marine dealerships of the same-line makes,
9 models, or classifications in the dealership's area of responsibility are providing
10 adequate representation, competition, and convenient consumer care for the
11 marine products of the same-line makes, models, or classifications located
12 within that area.

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

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

24 F. A manufacturer or distributor of a marine motor or marine engine
25 may, in their discretion, enter into a warranty service agreement with a marine
26 dealer of a boat package that is packaged with its particular brand marine
27 motor or engine without violating the area of responsibility of any other marine
28 dealer that has a franchise of that brand marine motor or engine. However, the
29 warranty service agreement shall not be construed to permit the marine dealer

1 to sell the marine motor or engine separate from the boat package, and the
2 marine dealer shall not hold itself out to be a full-line or loose marine motor or
3 engine dealership.

4 §1270.1. Unauthorized acts; marine products

5 It shall be a violation of this Part:

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

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

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

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

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

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

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

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

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

20 (aa) It was designed by experts.

21 (bb) The proper universe was examined.

22 (cc) A representative sample was chosen.

23 (dd) The data was accurately reported.

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

1 received from the marine dealer to any unaffiliated third party.

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

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

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

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

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

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

29 (f) To ship or sell marine products to a licensee prior to the licensee

1 having been granted a license by the commission to sell such products.

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

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

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

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

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

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

26 (ii) After any of the conditions have been met under Subitems (aa) and
27 (bb) of Item (i) of this Subparagraph, the commission shall allow the
28 manufacturer to compete with licensees of the same-line makes, models, or
29 classifications under an agreement from said manufacturer for longer than two

1 years when, in the discretion of the commission, the best interest of the
2 manufacturer, consuming public, and licensees are best served.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (3) For any person or other licensee:

25 (a) To modify a franchise during the term of the agreement or upon its
26 renewal if the modification substantially and adversely affects the dealer's
27 rights, obligations, investment, or return on investment without giving sixty-day
28 written notice of the proposed modification to the licensee and the commission
29 unless the modifications are required by law, court order, or the commission.

1 Within the sixty-day notice period the licensee may file with the commission a
2 complaint for a determination whether there is good cause for permitting the
3 proposed modification. The party seeking to modify or replace an agreement
4 shall demonstrate by a preponderance of the evidence that there is good cause
5 for the modification or replacement. The commission shall schedule a hearing
6 within sixty days to decide the matter. Multiple complaints pertaining to the
7 same proposed modifications shall be consolidated for hearing. The proposed
8 modification may not take effect pending the determination of the matter.

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

12 (i) The reasons for the proposed modification.

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

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

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

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

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

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

28 (4) For any employee of a licensee while acting in the scope of his
29 employment, to accept any payment, commission, fee, or compensation of any

1 kind from any person other than the employing licensee, unless such payment
2 is fully disclosed to and approved by the employing licensee.

3 §1270.2. Warranty; compensation; audits of marine dealer records

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

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

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

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

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

21 B.(1) Notwithstanding the terms of any franchise, warranty and sales,
22 incentive, audits of marine dealer records may be conducted by the
23 manufacturer, distributor, distributor branch, or factory branch. Any audit for
24 warranty parts or service compensation shall be for the twelve-month period
25 immediately following the date of the payment of the claim by the manufacturer
26 or distributor. However, a marine dealer shall not be held liable by virtue of an
27 audit for failure to retain parts for a period in excess of six months. Any audit
28 for sales incentives, service incentives, rebates, or other forms of incentive
29 compensation shall only be for the twelve-month period immediately following

1 the date of the final payment to the marine dealer under a promotion, event,
2 program, or activity. In no event shall the manufacturer, distributor,
3 distributor branch, or factory branch fail to allow the marine dealer to make
4 corrections to the sales data in less than one hundred twenty days from the
5 program period. Additionally, no penalty other than amounts advanced on a
6 marine product reported incorrectly shall be due in connection with the audit.
7 With respect to marine products sold during the time period subject to the
8 audit, but submitted incorrectly to the manufacturer, distributor, or wholesale
9 distributor branch or factory branch, the marine dealer shall be charged back
10 for the amount reported incorrectly and credited with the amount due, if
11 anything, on the actual sale date.

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

14 (a) The claim was false or fraudulent.

15 (b) The repairs were not properly made.

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

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

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

26 (4) Limitations on warranty parts or service compensation, sales
27 incentive audits, rebates, or other forms of incentive compensation, chargebacks
28 for warranty parts or service compensation, and service incentives and
29 chargebacks for sales compensation only shall not be effective in the case of

1 intentionally false or fraudulent claims.

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

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

9 §1270.3. Sale of water-damaged marine products

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

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

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

24 §1270.4. Succession; right of first refusal; marine dealers

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

29 B. Unless good cause exists for refusal to honor the succession on the

1 part of the manufacturer or distributor, any designated successor of a deceased
2 or incapacitated marine dealer of a marine dealership may succeed to the
3 ownership of the marine dealership under the existing franchise if:

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

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

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

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

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

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

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

1 **marine dealer.**

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

8 **§1270.5. Manufacturer, distributor, or wholesaler repurchase; marine dealer;**
9 **products**

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

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

1 **in this Section.**

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

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

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

17 **(2) Has engaged in an unfair business practice.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **H. Upon termination of the franchise, the marine dealer shall submit a**
15 **final inventory of marine products and parts on hand to the manufacturer,**
16 **distributor, or wholesaler by certified mail, return receipt requested, or**
17 **commercial delivery service with verification of receipt. If a manufacturer,**
18 **distributor, or wholesaler fails or refuses to repurchase as required by this**
19 **Section within thirty days of the receipt of the inventory, without just cause, the**
20 **manufacturer, distributor, or wholesaler shall be subjected to a penalty of the**
21 **marine dealer's reasonable attorney fees, court costs, and interest on the**
22 **inventory value of returnable marine products and parts required to be**
23 **purchased computed at the rate of one and one-half percent per month from the**
24 **thirty-first day, as long as such repurchase is not made.**

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

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

8 **K. In the event of the death or incapacity of the marine dealer or the**
9 **majority owner of a person operating as a marine dealer, the manufacturer,**
10 **distributor, or wholesaler shall, at the option of the heirs if the marine dealer**
11 **died intestate or the legatees or transferees under the terms of the deceased**
12 **marine dealer's last will and testament if the marine dealer died testate,**
13 **repurchase the inventory from the heirs, legatees, or transferees as if the**
14 **manufacturer, distributor, or wholesaler had terminated the contract, and the**
15 **inventory repurchase provisions of this Section shall apply. The heirs or legatees**
16 **shall have until the end of the contract term or one year from the date of the**
17 **death of the marine dealer or majority owner of a person, whichever comes**
18 **first, to exercise their option pursuant to this Section; provided, however, that**
19 **nothing in this Section shall require the repurchase of inventory if the heirs,**
20 **legatees, or transferees and the manufacturer, distributor, or wholesaler enter**
21 **into a new franchise to operate the marine dealership.**

22 **§1270.6. Manufacturer termination of line-make; manufacturer bankruptcy;**
23 **license**

24 **Notwithstanding the terms of any franchise or other provision of law, if**
25 **the termination, cancellation, or nonrenewal of a licensee's selling agreement is**
26 **the 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 §1270.7. Indemnification of marine dealers

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

12 §1270.8. Marine products repairs

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

23 §1270.9. Damage disclosure

24 A. Whenever a new marine product subject to regulation pursuant to
25 this Chapter is sold to any person, the seller shall notify the purchaser of any
26 body damage or mechanical damage which the marine product has sustained
27 that exceeds six percent of the manufacturer's suggested retail price. Such
28 notice shall be in writing and a copy thereof shall be delivered to the purchaser
29 prior to or simultaneous with transfer of the vehicle title.

1 **B. This Section shall apply to all instances of vehicular body or**
2 **mechanical damage to marine products and to all actions involving such**
3 **damage, notwithstanding the application of other codal, statutory, or regulatory**
4 **provisions, including but not limited to Civil Code Articles 2520 et seq.**

5 **PART III. PROVISIONS SPECIFIC TO MOTORCYCLES AND**

6 **ALL-TERRAIN VEHICLES**

7 **§1270.10. Establishment of new motorcycle or all-terrain vehicle dealerships or**
8 **relocations; protests; procedure**

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

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

1 responsibility, the affected motorcycle or all-terrain vehicle dealership shall
2 have the right to object.

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

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

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

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

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

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

1 **§1270.11. Unauthorized acts**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (e) To ship or sell motorcycles or all-terrain vehicles to a licensee prior

1 to the licensee having been granted a license by the commission to sell
2 motorcycles or all-terrain vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

29 (n) To refuse to deliver to any licensee having a franchise or contractual

1 arrangement for the retail sale of motorcycles or all-terrain vehicles sold or
2 distributed by such manufacturer, distributor, wholesaler, distributor branch
3 or factory branch, any motorcycle or all-terrain vehicle, publicly advertised for
4 immediate delivery, within sixty days after such dealer's order shall have been
5 received.

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

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

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

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

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

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

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

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

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

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

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

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

29 (g) To pay a fee to any person in return for the solicitation, procurement,

1 or production by that person of prospective purchasers for new and used
2 motorcycles or all-terrain vehicles, except to a motorcycle or all-terrain vehicle
3 salesman licensed under the provisions of this Chapter.

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

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

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

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

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

23 (3) For any person or other licensee:

24 (a) To modify a franchise during the term of the agreement or upon its
25 renewal if the modification substantially and adversely affects the franchisee's
26 rights, obligations, investment, or return on investment without giving sixty-day
27 written notice of the proposed modification to the licensee and the commission
28 unless the modifications are required by law, court order, or the commission.

29 Within the sixty-day notice period the licensee may file with the commission a

1 complaint for a determination whether there is good cause for permitting the
2 proposed modification. The party seeking to modify or replace an agreement
3 shall demonstrate by a preponderance of the evidence that there is good cause
4 for the modification or replacement. The commission shall schedule a hearing
5 within sixty days to decide the matter. Multiple complaints pertaining to the
6 same proposed modifications shall be consolidated for hearing. The proposed
7 modification may not take effect pending the determination of the matter.

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

11 (i) The reasons for the proposed modification.

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

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

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

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

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

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

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

1 **§1270.12. Indemnification of motorcycle and all-terrain vehicle franchised**
2 **dealers**

3 **Notwithstanding the terms of any franchise agreement, each**
4 **manufacturer or converter shall indemnify and hold harmless its franchised**
5 **motorcycle or all-terrain vehicle dealers against any judgment for damages,**
6 **including but not limited to court costs and reasonable attorney fees of the**
7 **motorcycle or all-terrain vehicle dealer, arising out of complaints, claims, or**
8 **lawsuits including but not limited to strict liability, negligence,**
9 **misrepresentation, express or implied warranty, or rescission of sale to the**
10 **extent that the judgment arises out of alleged defective or negligent**
11 **manufacture, assembly, or design of motorcycles or all-terrain vehicles, parts,**
12 **or accessories, or other functions by the manufacturer of converter, which are**
13 **beyond the control of the motorcycle or all-terrain vehicle dealer.**

14 **§1270.13. Warranty; compensation; audits of motorcycle or all-terrain vehicle**
15 **dealer records**

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

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

28 **(3) Warranty work includes parts and labor performed.**

29 **(4) All claims made by the motorcycle or all-terrain vehicle dealer for**

1 compensation under this Subsection shall be paid within thirty days after
2 approval and shall be approved or disapproved within thirty days after receipt.
3 When any claim is disapproved, the motorcycle or all-terrain vehicle dealer
4 shall be notified in writing of the grounds for disapproval.

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

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

29 (2) No claim which has been approved and paid may be charged back to

1 the motorcycle or all-terrain vehicle dealer unless it can be shown that one or
2 all of the following applies:

3 (a) The claim was false or fraudulent.

4 (b) The repairs were not properly made.

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

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

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

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

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

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

28 §1270.14. Damage disclosure

29 A. Whenever a new motorcycle or all-terrain vehicle subject to

1 regulation pursuant to this Chapter is sold to any person, the seller shall notify
2 the purchaser of any body damage or mechanical damage which the motorcycle
3 or all-terrain vehicle has sustained that exceeds six percent of the
4 manufacturer's suggested retail price or, in the case of recreational vehicles, six
5 percent of the manufacturer's wholesale price. Such notice shall be in writing
6 and a copy thereof shall be delivered to the purchaser prior to or simultaneous
7 with transfer of the motorcycle or all-terrain vehicle title.

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

13 §1270.15. Sale of water-damaged motorcycles or all-terrain vehicles

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

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

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

1 **§1270.16. Succession; right of first refusal**

2 **A. The terms of the franchise notwithstanding, any motorcycle or all-**
3 **terrain vehicle dealer may appoint by will, or other written instrument, a**
4 **designated successor to succeed in the ownership interest of the motorcycle or**
5 **all-terrain vehicle dealer in the dealership upon the death or incapacity of the**
6 **motorcycle or all-terrain vehicle dealer.**

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

11 **(1) The designated successor gives the manufacturer or distributor**
12 **written notice of his or her intention to succeed to the ownership of the**
13 **motorcycle or all-terrain vehicle dealer within sixty days of the motorcycle or**
14 **all-terrain vehicle dealer's death or incapacity.**

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

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

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

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

1 succession.

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

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

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

13 (1) The manufacturer or distributor shall allow the designated successor
14 a reasonable period of time which shall not be less than six months in which to
15 consummate a sale of the dealership. Any such sale shall be subject to R.S.
16 32:1270.11(1)(c).

17 (2) Upon termination of the franchise pursuant to such refusal, the
18 provisions of R.S. 32:1270.17 shall apply.

19 §1270.17. Requirements upon termination; penalty; indemnity; motorcycle or
20 all-terrain vehicle dealers

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

28 (a) All new motorcycles or all-terrain vehicles of the current and last
29 prior model year delivered to the licensee and parts on hand that have not been

1 damaged or substantially altered to the prejudice of the manufacturer while in
2 the possession of the licensee. As to motorcycle or all-terrain vehicle dealers,
3 the repurchase of parts shall be limited to those listed in the manufacturer's
4 price book. The motorcycle or all-terrain vehicles and parts shall be
5 repurchased at the cost to the licensee which shall include without limitation
6 freight and advertising costs, less all allowances paid to the motorcycle or all-
7 terrain vehicle dealer.

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

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

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

26 (2) The manufacturer or converter shall make the required repurchase
27 after the dealer terminates his franchise and within sixty days of the submission
28 to it, by certified mail, return receipt requested, or commercial delivery service
29 with verification of receipt, of a final inventory of motorcycles, all-terrain

1 vehicles, and parts on hand.

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

7 §1270.18. Manufacturer termination of line-make; manufacturer bankruptcy;
8 license; motorcycle or all-terrain vehicle franchise

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

15 §1270.19. Motorcycle or all-terrain vehicle repairs

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

26 PART IV. PROVISIONS SPECIFIC TO RECREATIONAL VEHICLES

27 §1270.20. Unauthorized acts; recreational vehicles

28 It shall be a violation of this Chapter:

29 (1) For a manufacturer, a distributor, a wholesaler, factory branch, or

1 officer, agent, or other representative thereof:

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

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

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

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

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

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

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

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

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

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

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

16 (c) To threaten to cancel any franchise or any contractual agreement
17 existing between such manufacturer, distributor, wholesaler, or factory branch
18 and said recreational vehicle dealer for any reason.

19 (d) To unfairly, without just cause and due regard to the equities of such
20 recreational vehicle dealer, cancel the franchise of any licensee. The
21 nonrenewal of a franchise with such recreational vehicle dealer or his successor
22 without just provocation or cause, or the refusal to approve a qualified
23 transferee or qualified successor to the dealer-operator as provided for in the
24 franchise agreement, shall be deemed an evasion of this Paragraph and shall
25 constitute an unfair cancellation, regardless of the terms or provisions of such
26 franchise. However, at least ninety-days notice shall be given to the recreational
27 vehicle dealer of any cancellation or nonrenewal of a franchise except for a
28 cancellation arising out of the financial default of the recreational vehicle dealer
29 or fraudulent activity of the recreational vehicle dealer principal which results

1 in the conviction of a crime punishable by imprisonment.

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

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

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

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

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

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

29 (k)(i) To sell or offer to sell a new or unused recreational vehicle directly

1 to a consumer except as provided in this Chapter, or to compete with a licensee
2 in the same-line makes, models, or classifications operating under an agreement
3 or franchise from the aforementioned manufacturer. A manufacturer shall not,
4 however, be deemed to be competing when any one of the following conditions
5 are met:

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

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

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

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

21 (l) To condition the renewal or extension of a franchise on a new
22 recreational vehicle dealer's substantial renovation of the recreational vehicle
23 dealer's place of business or on the construction, purchase, acquisition, or rental
24 of a new place of business by the new recreational vehicle dealer, unless the
25 manufacturer has advised the new recreational vehicle dealer in writing of its
26 intent to impose such a condition within a reasonable time prior to the effective
27 date of the proposed date of renewal or extension, but in no case less than one
28 hundred eighty days, and provided the manufacturer demonstrates the need for
29 such demand in view of the need to service the public and the economic

1 conditions existing in the recreational vehicle industry at the time such action
2 would be required of the new recreational vehicle dealer. As part of any such
3 condition the manufacturer shall agree, in writing, to supply the recreational
4 dealer with an adequate supply and marketable model mix of recreational
5 vehicles to meet the sales levels necessary to support the increased overhead
6 incurred by the recreational vehicle dealer by reason of such renovation,
7 construction, purchase, or rental of a new place of business.

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

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

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

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

27 (q) To demand compliance with facilities requirements that include any
28 requirements that a recreational vehicle dealer establish or maintain exclusive
29 office, parts, service or body shop facilities, unless such requirements would be

1 reasonable and justified by business considerations. The burden of proving that
2 such requirements are reasonable and justified by business considerations is on
3 the manufacturer. If the franchise agreement of the manufacturer or
4 distributor requires the approval of the manufacturer or distributor for facility
5 uses or modifications, the manufacturer or distributor shall approve or
6 disapprove such a request in writing within sixty days of receipt of such request.

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

11 (s) To make a change in the area of responsibility described in the
12 franchise agreement or sales and service agreement of a recreational vehicle
13 dealer, without the franchisor or manufacturer giving said recreational vehicle
14 dealer and the commission no less than sixty days prior written notice by
15 certified or registered mail.

16 (t) To attempt to induce or coerce, or to induce or coerce, any
17 recreational vehicle dealer to enter into any agreement with such manufacturer,
18 distributor, wholesaler, distributor branch or factory branch or representative
19 thereof, or to do any other act unfair to said recreational vehicle dealer.

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

29 (aa) By any statement, promise, or threat that the manufacturer or

1 distributor will in any manner benefit or injure the dealer, whether the
2 statement, suggestion, threat, or promise is express or implied or made directly
3 or indirectly.

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

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

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

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

25 (2) For a recreational vehicle dealer or a recreational vehicle salesman:

26 (a) To require a purchaser of a recreational vehicle, as a condition of sale
27 and delivery thereof, to also purchase special features, appliances, accessories,
28 or equipment not desired or requested by the purchaser; however, this
29 prohibition shall not apply as to special features, appliances, accessories, or

1 equipment which are permanently affixed to the recreational vehicle.

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

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

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

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

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

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

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

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

29 (iv) That if the conditional sale is not completed, the recreational vehicle

1 dealer shall immediately refund to the purchaser upon return of the
2 recreational vehicle all sums placed with the dealership as a deposit or any
3 other purpose associated with the attempted sale of the vehicle.

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

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

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

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

29 (j)(i) To fail to disclose to a purchaser in writing on the sales contract,

1 buyer's order, or any other document that the recreational vehicle dealer may
2 be participating in finance charges associated with the sale.

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

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

8 (3) For any person or other licensee:

9 (a) To modify a franchise during the term of the agreement or upon its
10 renewal if the modification substantially and adversely affects the franchisee's
11 rights, obligations, investment, or return on investment without giving sixty-day
12 written notice of the proposed modification to the licensee and the commission
13 unless the modifications are required by law, court order, or the commission.
14 Within the sixty-day notice period the licensee may file with the commission a
15 complaint for a determination whether there is good cause for permitting the
16 proposed modification. The party seeking to modify or replace an agreement
17 shall demonstrate by a preponderance of the evidence that there is good cause
18 for the modification or replacement. The commission shall schedule a hearing
19 within sixty days to decide the matter. Multiple complaints pertaining to the
20 same proposed modifications shall be consolidated for hearing. The proposed
21 modification may not take effect pending the determination of the matter.

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

25 (i) The reasons for the proposed modification.

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

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

1 investment.

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

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

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

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

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

16 §1270.21. Indemnification of franchised recreational vehicle dealers

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

27 §1270.22. Payment to recreational vehicles dealers; penalties

28 It shall be a violation of this Chapter for a recreational vehicle
29 manufacturer, distributor, wholesaler, factory branch, officer, agent or other

1 representative thereof, to fail to pay a recreational vehicle dealer all monies due
2 the recreational vehicle dealer, except manufacturer hold-back amounts, within
3 thirty days of the date of completion of the transactions or submissions of the
4 claims giving rise to the payments to the recreational vehicle dealers. Failure to
5 make payments shall subject the manufacturer, distributor, wholesaler, factory
6 branch, officer, agent, or other representative thereof, to a penalty of the one
7 and one-half percent interest per month, or fraction thereof, until sums due the
8 recreational vehicle dealer are fully paid.

9 §1270.23. Warranty; compensation; audits of recreational vehicle dealer
10 records

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

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

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

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

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

28 B.(1) Notwithstanding the terms of any franchise agreement, warranty,
29 and sales incentive, audits of recreational vehicle dealer records may be

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

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

22 (a) The claim was false or fraudulent.

23 (b) The repairs were not properly made.

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

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

1 time the claim arose.

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

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

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

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

17 §1270.24. Recreational vehicle repairs

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

28 §1270.25. Damage disclosure; recreational vehicles

29 A. Whenever a new recreational vehicle subject to regulation pursuant

1 to this Part is sold to any person, the seller shall notify the purchaser of any
2 body damage or mechanical damage which the recreational vehicle has
3 sustained that exceeds six percent of the manufacturer's wholesale price. Such
4 notice shall be in writing and a copy thereof shall be delivered to the purchaser
5 prior to or simultaneous with transfer of the recreational vehicle title.

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

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

14 §1270.26. Notice regarding recalls; recreational vehicles

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

28 §1270.27. Sale of water-damaged recreational vehicles

29 A. No person shall sell, transfer, or convey any new or used recreational

1 vehicle to any person without notifying the buyer or receiver of the recreational
2 vehicle in writing of the extent of any water damage from flooding which
3 occurred to the recreational vehicle prior to the transaction.

4 B. If a sale, transfer, or conveyance of a new or used recreational vehicle
5 occurs in violation of Subsection A of this Section, the person receiving
6 ownership and title to the recreational vehicle who is not otherwise aware of the
7 damage at the time of the transaction may bring an action to set aside the
8 transaction within one year from the date of the transaction and receive all
9 monies or other property given as consideration for the vehicle less a reasonable
10 assessment for miles driven.

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

14 §1270.28. Succession; right of first refusal; recreational vehicle dealer

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

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

23 (a) The designated successor gives the manufacturer or distributor
24 written notice of his or her intention to succeed to the ownership of the
25 recreational vehicle dealer within sixty days of the recreational vehicle dealer's
26 death or incapacity.

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

29 (3) The manufacturer or distributor may request, and the designated

1 successor shall provide, promptly upon such request, personal and financial
2 data reasonably necessary to determine whether the succession should be
3 honored.

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

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

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

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

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

25 (a) The manufacturer or distributor shall allow the designated successor
26 a reasonable period of time which shall not be less than six months in which to
27 consummate a sale of the dealership. Any such sale shall be subject to R.S.
28 32:1270.20(1)(d).

29 (b) Upon termination of the franchise pursuant to such refusal, the

1 provisions of R.S. 32:1270.29 shall apply.

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

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

12 (2) The applicability of R.S. 32:1270.20(1)(l) shall not be expanded or
13 changed.

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

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

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

1 transferee at the time of closing of the sale or transfer for which the
2 manufacturer or distributor exercised its right of first refusal.

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

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

14 §1270.29. Requirements upon termination; penalty; indemnity; recreational
15 vehicles

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

23 (a) All new recreational vehicles of the current and last prior model year
24 delivered to the licensee and parts limited to those listed in the manufacturer's
25 price book. The recreational vehicles and parts shall be repurchased at the cost
26 to the licensee which shall include without limitation freight and advertising
27 costs, less all allowances paid to the recreational vehicle dealer.

28 (b) At fair market value, each undamaged sign owned by the recreational
29 vehicle dealer which bears a trademark or trade name used or claimed by the

1 manufacturer, distributor, or representative if the sign was purchased from or
2 purchased at the request of the manufacturer, distributor, or representative.
3 Fair market value shall be no less than cost of acquisition of the sign by the
4 recreational vehicle dealer.

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

13 (d) The manufacturer, converter, distributor, or representative shall pay
14 to the recreational vehicle dealer the costs of transporting, handling, packing,
15 and loading of recreational vehicles, or parts, signs, tools, and equipment
16 subject to repurchase.

17 (2) The manufacturer or converter shall make the required repurchase
18 after the recreational vehicle dealer terminates his franchise and within sixty
19 days of the submission to it, by certified mail, return receipt requested, or
20 commercial delivery service with verification of receipt, of a final inventory of
21 recreational vehicles and parts on hand.

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

27 C.(1) Upon the involuntary termination, nonrenewal, or cancellation of
28 any franchise by the manufacturer or converter, except for termination,
29 nonrenewal, or cancellation resulting from a felony conviction, notwithstanding

1 the terms of any franchise, whether entered into before or after the enactment
 2 of this Chapter or any of its provisions, the new recreational vehicle dealer shall
 3 be allowed fair and reasonable compensation by the manufacturer or converter
 4 as agreed by the parties, or lacking agreement, as determined by the
 5 commission, for the dealership facilities if the facilities were required to be
 6 purchased or constructed as a precondition to obtaining the franchise or to its
 7 renewal; provided that if such facilities were leased and the lease were required
 8 as a precondition to obtaining the franchise or to its renewal, then the
 9 manufacturer shall be liable for one year's payment of the rent or the
 10 remainder of the term of the lease, whichever is less.

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

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

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

19 §1270.30. Recreational vehicle manufacturer termination of line-make;
 20 manufacturer bankruptcy; license

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

27 Section 2. R.S. 32:1257.1, 1261(6)(a)(ii), and 1268.1 are hereby repealed.

28 Section 3. The Louisiana State Law Institute is hereby directed to redesignate R.S.

29 32:1251 through 1269 of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, as

1 Part I of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950. Part I shall be
2 entitled "GENERAL PROVISIONS APPLICABLE TO MOTOR VEHICLES AND
3 RECREATIONAL PRODUCTS".

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

DIGEST

Martiny (SB 360)

Present law provides for the regulation of motor vehicles, specialty 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 specialty vehicles.

Proposed law changes the definition of "boat package" and "franchise".

Proposed law defines the following terms: "marine product salesman", "new marine product", "selling agreement", "used marine product", "used marine product dealer", "used marine product facility", "motorcycle or all-terrain vehicle dealer", "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", "used motorcycle or all-terrain vehicle facility", "new recreational vehicle", "recreational vehicle dealer", "recreational vehicle salesman", "used recreational vehicle", "used recreational vehicle dealer", "used recreational vehicle facility".

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

Effective August 1, 2012.

(Amends R.S. 32:1252(4) and (19), 1261, 1261.1, and 1263; adds R.S. 32:1252(52)-(69), 1262(C), 1264(D), 1267(C), 1268(D), and 1270-1270.30; repeals R.S. 32:1257.1 and 1268.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Deletes certain definitions.
2. Adds provisions relative to certain unauthorized acts.
3. Removes provisions relative to venue.
4. Adds provisions relative to marine products and motorcycles or all-terrain vehicles.
5. Adds technical amendments.
6. Changes the phrase "selling agreement" to "franchise".