

SENATE BILL NO. 360

BY SENATOR MARTINY AND REPRESENTATIVE PONTI

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 and
6 1268.1, relative to marine products, motorcycles, all-terrain vehicles, and
7 recreational vehicles; to provide for certain terms, conditions, requirements, and
8 procedures; to provide for definitions; to provide for the establishment of new
9 dealerships and the relocation of existing dealerships; to provide for payment to
10 dealers; to provide for unauthorized acts; to provide for warranty agreements and
11 application thereof; to provide for the sale and leasing of certain marine products,
12 motorcycles, all-terrain vehicles, and recreational vehicles; to provide for the
13 succession of a dealer; to provide for the procedure to terminate a dealership; to
14 provide for the repurchase of certain products, equipment, parts, and tools; and to
15 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
18 and reenacted and R.S. 32:1252(52) through (69), 1262(C), 1264(D), 1267(C), 1268(D), and
19 Parts II, III, and IV of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, to be
20 comprised of R.S. 32:1270 through 1270.30 are hereby enacted to read as follows:

21 §1252. Definitions

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

25 * * *

26 (4) "Boat package" means a boat that is equipped from its manufacturer or
27 distributor with an inboard, outboard, or inboard/outboard motor or engine attached

1 branch, by which the marine dealer is authorized to engage in the business of
2 selling or leasing the specific makes, models, or classifications of marine
3 products marketed or leased by the manufacturer, and designated in the selling
4 agreement or any addendum thereto. For the purposes of this Paragraph, any
5 written modification, amendment, or addendum to the original selling
6 agreement that changes the rights and obligations of the parties to the original
7 selling agreement shall constitute a new selling agreement, effective as of the
8 date of the modification, amendment, or addendum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (v) Insurance companies.

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

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

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

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

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

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

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

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

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

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

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

1 employed motorcycle or all-terrain vehicle salesman.

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

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

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

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

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

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

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

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

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

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

30 (v) Insurance companies.

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

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

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

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

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

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

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

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

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

29 (v) Insurance companies who sell recreational vehicles to which they
30 have taken title as an incident of payments made under policies of insurance

1 and who do not maintain a used car lot or building with one or more employed
2 recreational vehicle salesman.

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

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

8 * * *

9 §1261. Unauthorized acts

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

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

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

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

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

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

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

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

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

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

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

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

24 (aa) It was designed by experts.

25 (bb) The proper universe was examined.

26 (cc) A representative sample was chosen.

27 (dd) The data was accurately reported.

28 (ix) To release, convey, or otherwise provide customer information, if to do
29 so is unlawful or if the customer objects in writing. This does not include
30 information that is necessary for the manufacturer to meet its obligations to the

1 dealer or consumers in regard to contractual responsibilities, vehicle recalls, or other
2 requirements imposed by state or federal law. The manufacturer is further prohibited
3 from providing any consumer information received from the dealer to any
4 unaffiliated third party.

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

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

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

16 (d) To unfairly, without just cause and due regard to the equities of such
17 dealer, cancel the franchise of any licensee. Failure to meet performance standards
18 based on a survey of sales penetration in a regional, national, territorial, or other
19 geographic area shall not be the sole cause for cancellation of a franchise. The
20 nonrenewal of a franchise or selling agreement with such dealer or his successor
21 without just provocation or cause, or the refusal to approve a qualified transferee or
22 qualified successor to the dealer-operator as provided for in the franchise or selling
23 agreement, or solely for failure to meet performance standards based on a survey of
24 sales penetration in a regional, national, territorial, or other geographic area, shall be
25 deemed an evasion of this Paragraph and shall constitute an unfair cancellation,
26 regardless of the terms or provisions of such franchise or selling agreement.
27 However, at least ninety-days notice shall be given to the dealer of any cancellation
28 or nonrenewal of a franchise except for a cancellation arising out of the financial
29 default of the motor vehicle dealer or fraudulent activity of the dealer principal
30 which results in the conviction of a crime punishable by imprisonment. The

1 provisions of this Subsection relating to performance standards shall not apply to
2 recreational products dealers.

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

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

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

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

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

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

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

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

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

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

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

15 (l) To condition the renewal or extension of a franchise on a new motor
16 vehicle dealer's substantial renovation of the dealer's place of business or on the
17 construction, purchase, acquisition, or rental of a new place of business by the new
18 motor vehicle dealer, unless the manufacturer has advised the new motor vehicle
19 dealer in writing of its intent to impose such a condition within a reasonable time
20 prior to the effective date of the proposed date of renewal or extension, but in no case
21 less than one hundred eighty days, and provided the manufacturer demonstrates the
22 need for such demand in view of the need to service the public and the economic
23 conditions existing in the motor vehicle industry at the time such action would be
24 required of the new motor vehicle dealer. As part of any such condition the
25 manufacturer shall agree, in writing, to supply the dealer with an adequate supply
26 and marketable model mix of motor vehicles to meet the sales levels necessary to
27 support the increased overhead incurred by the dealer by reason of such renovation,
28 construction, purchase, or rental of a new place of business.

29 (m) To fail to compensate its dealers for the work and services they are
30 required to perform in connection with the dealer's delivery and preparation

1 obligations according to the terms of compensation that shall be filed with the
2 commission on or before October first of each year. The commission shall find the
3 compensation to be reasonable or the manufacturer shall remedy any deficiencies.

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

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

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

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

26 (r) To demand compliance with facilities requirements that include any
27 requirements that a motor vehicle dealer establish or maintain exclusive office, parts,
28 service or body shop facilities, unless such requirements would be reasonable and
29 justified by business considerations. The burden of proving that such requirements
30 are reasonable and justified by business considerations is on the manufacturer. If the

1 franchise agreement of the manufacturer or distributor requires the approval of the
2 manufacturer or distributor for facility uses or modifications, the manufacturer or
3 distributor shall approve or disapprove such a request in writing within sixty days of
4 receipt of such request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 purchaser.

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

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

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

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

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

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

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

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

26 (v) That the prospective purchaser shall return the vehicle to the dealership
27 within forty-eight hours of notification by the dealer that the conditional sale will not
28 be completed. If the prospective purchaser does not return the vehicle to the
29 dealership within forty-eight hours of notification by the dealer, an authorized agent
30 of the dealer shall have the right to recover the vehicle without the necessity of

1 judicial process, provided that such recovery can be accomplished without
2 unauthorized entry into a closed dwelling, whether locked or unlocked and without
3 a breach of peace.

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

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

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

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

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

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

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

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

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

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

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

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

16 (e) To pay a fee to any person in return for the solicitation, procurement, or
17 production by that person of prospective lessees of vehicles, unless the person
18 receiving the fee is a lease facilitator who holds a valid license as provided by this
19 Chapter and a valid appointment from the motor vehicle lessor as provided by R.S.
20 32:1266(B)(1). The fees prohibited by this Subparagraph shall not include amounts
21 paid to a dealer as part of the consideration for the sale or assignment of a lease or
22 leased vehicle or other amounts paid to the dealer who transfers the title on the
23 vehicle or assigns the lease contract to the motor vehicle lessor.

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

27 (g) When leasing a vehicle to a consumer, to assess any consumer services
28 fees, which shall include fees for treating the interior upholstery of the vehicle, oil
29 changes, roadside assistance, dealer inspections, or any other service offered by the
30 motor vehicle lessor, without allowing the consumer to refuse such services and be

1 exempt from payment for such services. The provisions of this Subparagraph shall
2 not apply to motor vehicle lessor-added options or accessories which are
3 permanently affixed to the vehicle.

4 (4) For a lease facilitator:

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

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

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

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

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

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

22 (5) For a broker:

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

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

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

30 (d) To sign a vehicle manufacturer's statement of origin to a vehicle, accept

1 an assignment of a manufacturer's statement of origin to a vehicle, or otherwise
2 assume any element of title to a new vehicle.

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

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

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

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

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

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

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

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

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

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

1 brokering agreement.

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

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

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

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

13 (6) For any person or other licensee:

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

28 ~~(ii) With respect to recreational products, to modify a franchise during the~~
29 ~~term of the agreement or upon its renewal if the modification substantially and~~
30 ~~adversely affects the franchisee's rights, obligations, investment, or return on~~

1 ~~investment without giving sixty-day written notice of the proposed modification to~~
2 ~~the licensee and the commission unless the modifications are required by law, court~~
3 ~~order, or the commission. Within the sixty-day notice period the licensee may file~~
4 ~~with the commission a complaint for a determination whether there is good cause for~~
5 ~~permitting the proposed modification. The party seeking to modify or replace an~~
6 ~~agreement shall demonstrate by a preponderance of the evidence that there is good~~
7 ~~cause for the modification or replacement. The commission shall schedule a hearing~~
8 ~~within sixty days to decide the matter. Multiple complaints pertaining to the same~~
9 ~~proposed modifications shall be consolidated for hearing. The proposed modification~~
10 ~~may not take effect pending the determination of the matter.~~

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

13 (i) The reasons for the proposed modification.

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

16 (iii) The degree to which the proposed modification will have a substantial
17 and adverse effect upon the licensee's investment or return on 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 orderly
20 and profitable distribution of vehicles and other services by the licensee.

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

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

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

1 repairs and services from charging a service fee for the use of shop supplies such as
2 rags, fender covers, small amounts of fluid, or other items which are not itemized,
3 provided that such fee does not exceed five percent of the total invoice for
4 mechanical repairs or thirty-five dollars, whichever is less.

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

8 §1264. Damage disclosure

9 * * *

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

12 * * *

13 §1267. Succession; right of first refusal

14 * * *

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

17 §1268. Requirements upon termination; penalty; indemnity

18 * * *

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

22 * * *

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

24 **§1270. Establishment of new marine dealerships or relocations; protests;**
25 **procedure**

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

1 models, or classifications dealership whose area of responsibility includes the
2 location of the proposed new marine dealership may object to the granting of
3 the license.

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

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

27 D. Whenever the commission receives an objection pursuant to the
28 provisions of Subsection A of this Section, or whenever the commission receives
29 an objection pursuant to the assignment of the marine dealer's area of principal
30 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 its 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
30 to sell the marine motor or engine separate from the boat package, and the

1 marine dealer shall not hold itself out to be a full-line or loose marine motor or
2 engine dealership.

3 §1270.1. Unauthorized acts; marine products

4 It shall be a violation of this Part:

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

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

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

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

14 (iii) 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 involving a manufacturer, distributor,
18 wholesaler, distributor branch or factory branch, or officer, agent, or other
19 representative thereof.

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

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

30 (vi) To participate in an advertising group or to participate monetarily

1 in an advertising campaign or contest or to purchase any promotional
2 materials, showroom, or other display decorations or materials at the expense
3 of such marine dealer.

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

18 (aa) It was designed by experts.

19 (bb) The proper universe was examined.

20 (cc) A representative sample was chosen.

21 (dd) The data was accurately reported.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (j) To fail to compensate its marine dealers for the work and services
29 they are required to perform in connection with the marine dealer's delivery
30 and preparation obligations according to the terms of compensation that shall

1 be filed with the commission on or before October first of each year. The
2 commission shall find the compensation to be reasonable or the manufacturer
3 shall remedy any deficiencies.

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

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

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

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

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

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

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

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

30 (d) To sell or offer to sell makes, models, or classifications of new marine

1 products for which no franchise and license to sell is held.

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

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

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

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

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

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

24 (v) That the prospective purchaser shall return the marine product to the
25 dealership within forty-eight hours of notification by the marine dealer that the
26 conditional sale will not be completed. If the prospective purchaser does not
27 return the marine product to the dealership within forty-eight hours of
28 notification by the marine dealer, an authorized agent of the marine dealer shall
29 have the right to recover the marine product without the necessity of judicial
30 process, provided that such recovery can be accomplished without unauthorized

1 entry into a closed dwelling, whether locked or unlocked and without a breach
2 of peace.

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

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

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

17 (3)(a) For any person or other licensee to modify a franchise during the
18 term of the agreement or upon its renewal if the modification substantially and
19 adversely affects the dealer's rights, obligations, investment, or return on
20 investment without giving a sixty-day written notice of the proposed
21 modification to the licensee and the commission unless the modifications are
22 required by law, court order, or the commission. Within the sixty-day notice
23 period, the licensee may file with the commission a complaint for a
24 determination whether there is good cause for permitting the proposed
25 modification. The party seeking to modify or replace an agreement shall
26 demonstrate by a preponderance of the evidence that there is good cause for the
27 modification or replacement. The commission shall schedule a hearing within
28 sixty days to decide the matter. Multiple complaints pertaining to the same
29 proposed modifications shall be consolidated for hearing. The proposed
30 modification may not take effect pending the determination of the matter.

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

4 **(i) The reasons for the proposed modification.**

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

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

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

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

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

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

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

24 **§1270.2. Warranty; compensation; audits of marine dealer records**

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

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

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

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

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

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

1 anything, on the actual sale date.

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

4 (a) The claim was false or fraudulent.

5 (b) The repairs were not properly made.

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

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

13 (3) A manufacturer or distributor shall not deny a claim solely based on
14 a marine dealer's incidental failure to comply with a specific claim processing
15 requirement, or a clerical error, or other 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 marine dealer more frequently than two sales-related and two service-related
23 audits in a twelve-month period. Nothing in this Subsection shall limit a
24 manufacturer's or distributor's ability to perform routine claim reviews in the
25 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 §1270.3. Sale of water-damaged marine products

29 A. No person shall sell, transfer, or convey any new or used marine
30 product to any person without notifying the buyer or receiver of the marine

1 product in writing of the extent of any water damage from flooding which
2 occurred to the marine product prior to the transaction.

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

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

13 §1270.4. Succession; right of first refusal; marine dealers

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

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

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

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

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

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

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

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

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

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

25 §1270.5. Manufacturer, distributor, or wholesaler repurchase; marine dealer;
26 products

27 A. If any marine dealer enters into a franchise with a manufacturer,
28 distributor, or wholesaler wherein the marine dealer agrees to maintain an
29 inventory of marine products or repair parts, the manufacturer, distributor, or
30 wholesaler shall not terminate or fail to renew such franchise unless there is a

1 breach of the franchise by the marine dealer and until ninety days after notice
2 of such intention to terminate, including the breach of the franchise, has been
3 sent by certified mail, return receipt requested, or commercial delivery service
4 with verification of receipt, to the marine dealer and the marine dealer has
5 failed to correct the breach within such period.

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

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

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

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

3 (2) Has engaged in an unfair business practice.

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

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

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

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

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

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

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

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

21 F. As required by this Section, the manufacturer, distributor, or
22 wholesaler shall repurchase the inventory which can be verified as previously
23 purchased from them, including all new and unused marine products of the
24 current and immediate prior model or program year and new and unused parts
25 on hand and held by the marine dealer on the date of termination of the
26 contract. The manufacturer, distributor, or wholesaler shall pay an amount
27 equivalent to the cost actually paid by the marine dealer, including discounts
28 given and rebates paid per unit for any new, unused, undamaged, and unaltered
29 from original invoice and delivery, and complete marine product. The
30 manufacturer, distributor, or wholesaler shall also pay an amount equal to the

1 price paid by the marine dealer for any new, unused, and undamaged repair
2 parts and accessories which are listed in the manufacturer's, distributor's, or
3 wholesaler's prevailing parts list or were delivered in the past forty-eight
4 months and are in their original packaging.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 K. In the event of the death or incapacity of the marine dealer or the
22 majority owner of a person operating as a marine dealer, the manufacturer,
23 distributor, or wholesaler shall, at the option of the heirs, if the marine dealer
24 died intestate, or the legatees or transferees under the terms of the deceased
25 marine dealer's last will and testament if the marine dealer died testate,
26 repurchase the inventory from the heirs, legatees, or transferees as if the
27 manufacturer, distributor, or wholesaler had terminated the contract, and the
28 inventory repurchase provisions of this Section shall apply. The heirs or legatees
29 shall have until the end of the contract term or one year from the date of the
30 death of the marine dealer or majority owner of a person, whichever comes

1 first, to exercise their option pursuant to this Section. However, nothing in this
2 Section shall require the repurchase of inventory if the heirs, legatees, or
3 transferees and the manufacturer, distributor, or wholesaler enter into a new
4 franchise to operate the marine dealership.

5 §1270.6. Manufacturer termination of line-make; manufacturer bankruptcy;
6 license

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

13 §1270.7. Indemnification of marine dealers

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

24 §1270.8. Marine products repairs

25 Suppliers of mechanical repairs and services for any marine product
26 subject to regulation pursuant to this Part shall provide each consumer with an
27 itemized bill indicating repairs and services performed, parts replaced, or
28 materials used, the total labor charge, and the identity of the mechanic,
29 repairman, or supplier who performed the work. However, nothing in this
30 Section shall prohibit a supplier of mechanical repairs and services from

1 charging a service fee for the use of shop supplies such as rags, fender covers,
2 small amounts of fluid, or other items which are not itemized, provided that
3 such fee does not exceed five percent of the total invoice for mechanical repairs
4 or thirty-five dollars, whichever is less.

5 §1270.9. Damage disclosure

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

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

16 PART III. PROVISIONS SPECIFIC TO MOTORCYCLES AND

17 ALL-TERRAIN VEHICLES

18 §1270.10. Establishment of new motorcycle or all-terrain vehicle dealerships or
19 relocations; protests; procedure

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

29 B. Whenever the commission receives an application for a recreation
30 products dealer's license which would relocate an existing motorcycle or all-

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

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

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

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

30 (2) The financial impact on both the applicant and the existing

1 motorcycle or all-terrain vehicle dealership or dealerships.

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

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

9 §1270.11. Unauthorized acts

10 It shall be a violation of this Part:

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

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

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

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

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

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

28 (v) To enter into a franchise with a licensee or during the franchise term,
 29 use any written instrument, agreement, release, assignment, novation, estoppel,
 30 or waiver, to attempt to nullify or modify any provision of this Chapter, or to

1 require any controversy between a dealer and a manufacturer to be referred to
2 any person or entity other than the commission, or duly constituted courts of
3 this state or the United States, if such referral would be binding upon the
4 motorcycle or all-terrain vehicle dealer. Such instruments are null and void,
5 unless done in connection with a settlement agreement to resolve a matter
6 pending a commission hearing or pending litigation.

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

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

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

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

22 (c) To unfairly, without just cause and due regard to the equities of the
23 motorcycle or all-terrain vehicle dealer, cancel the franchise of the licensee. The
24 nonrenewal of a franchise with such dealer or his successor without just
25 provocation or cause, or the refusal to approve a qualified transferee or
26 qualified successor to the dealer-operator as provided for in the franchise shall
27 be deemed a violation of this Subparagraph and shall constitute an unfair
28 cancellation, regardless of the terms or provisions of such franchise. However,
29 at least ninety days notice shall be given to the dealer of a cancellation or
30 nonrenewal of franchise except for a cancellation arising out of fraudulent

1 activity of the dealer principal which results in the conviction of a crime
2 punishable by imprisonment.

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

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

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

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

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

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

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

1 years.

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

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

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

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

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

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

29 (m) To make a change in the area of responsibility described in the
30 franchise agreement or sales and service agreement of a motorcycle or all-

1 terrain vehicle dealer, without the franchisor, converter, or manufacturer
2 giving the motorcycle or all-terrain vehicle dealer and the commission no less
3 than sixty days prior written notice by certified or registered mail.

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

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

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

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

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

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

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

29 (f) To deliver to a prospective purchaser a new or a used motorcycle or
30 all-terrain vehicle on a sale conditioned on financing, i.e., a spot delivery, except

1 on the following terms and conditions which shall be in writing and shall be a
2 part of the conditional sales contract or other written notification signed by the
3 purchaser:

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

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

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

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

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

1 and without a breach of peace.

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

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

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

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

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

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

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

1 period, the licensee may file with the commission a complaint for a
2 determination whether there is good cause for permitting the proposed
3 modification. The party seeking to modify or replace an agreement shall
4 demonstrate by a preponderance of the evidence that there is good cause for the
5 modification or replacement. The commission shall schedule a hearing within
6 sixty days to decide the matter. Multiple complaints pertaining to the same
7 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 vehicles and other services by the licensee.

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

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

27 (4) For any employee of a licensee while acting in the scope of his
28 employment, to accept any payment, commission, fee, or compensation of any
29 kind from any person other than the employing licensee, unless such payment
30 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 or 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
30 compensation under this Subsection shall be paid within thirty days after

1 approval and shall be approved or denied within thirty days after receipt. When
2 any claim is denied, the motorcycle or all-terrain vehicle dealer shall be notified
3 in writing of the grounds for denial.

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

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

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

1 (a) The claim was false or fraudulent.

2 (b) The repairs were not properly made.

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

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

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

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

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

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

26 §1270.14. Damage disclosure

27 A. Whenever a new motorcycle or all-terrain vehicle subject to
28 regulation pursuant to this Chapter is sold to any person, the seller shall notify
29 the purchaser of any body damage or mechanical damage which the motorcycle
30 or all-terrain vehicle has sustained that exceeds six percent of the

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

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

10 §1270.15. Sale of water-damaged motorcycles or all-terrain vehicles

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

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

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

27 §1270.16. Succession; right of first refusal

28 A. The terms of the franchise notwithstanding, any motorcycle or all-
 29 terrain vehicle dealer may appoint by will, or other written instrument, a
 30 designated successor to succeed in the ownership interest of the motorcycle or

1 all-terrain vehicle dealer in the dealership upon the death or incapacity of the
2 motorcycle or all-terrain vehicle dealer.

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

7 (1) The designated successor gives the manufacturer or distributor
8 written notice of his intention to succeed to the ownership of the motorcycle or
9 all-terrain vehicle dealer within sixty days of the motorcycle or all-terrain
10 vehicle dealer's death or incapacity.

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

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

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

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

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

30 G. In determining whether good cause for the refusal to honor the

1 succession exists, the manufacturer or distributor has the burden of proving
 2 that the designated successor is not of good moral character or does not
 3 otherwise meet the manufacturer's or distributor's reasonable standards as a
 4 franchisee.

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

8 (1) The manufacturer or distributor shall allow the designated successor
 9 a reasonable period of time which shall not be less than six months in which to
 10 consummate a sale of the dealership. Any such sale shall be subject to R.S.
 11 32:1270.11(1)(c).

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

14 §1270.17. Requirements upon termination; penalty; indemnity; motorcycle or
 15 all-terrain vehicle dealers

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

23 (a) All new motorcycles or all-terrain vehicles of the current and last
 24 prior model year delivered to the licensee and parts on hand that have not been
 25 damaged or substantially altered to the prejudice of the manufacturer while in
 26 the possession of the licensee. As to motorcycle or all-terrain vehicle dealers,
 27 the repurchase of parts shall be limited to those listed in the manufacturer's
 28 price book. The motorcycle or all-terrain vehicles and parts shall be
 29 repurchased at the cost to the licensee which shall include without limitation
 30 freight and advertising costs, less all allowances paid to the motorcycle or all-

1 terrain vehicle dealer.

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

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

16 (2) The manufacturer, converter, distributor, or representative shall pay
17 to the motorcycle or all-terrain vehicle dealer the costs of transporting,
18 handling, packing, and loading of motorcycles or all-terrain vehicles, or parts,
19 signs, tools, and equipment subject to repurchase.

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

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

30 §1270.18. Manufacturer termination of line-make; manufacturer bankruptcy;

license; motorcycle or all-terrain vehicle franchise

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

§1270.19. Motorcycle or all-terrain vehicle repairs

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

PART IV. PROVISIONS SPECIFIC TO RECREATIONAL VEHICLES

§1270.20. Unauthorized acts; recreational vehicles

It shall be a violation of this Chapter:

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

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

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

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

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

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

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

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

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

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

30 (ix) To pay the attorney fees of the manufacturer or distributor related

1 to hearings and appeals brought under this Chapter.

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

7 (c) To threaten to cancel any franchise or any contractual agreement
8 existing between such manufacturer, distributor, wholesaler, or factory branch
9 and the recreational vehicle dealer for any reason.

10 (d) To unfairly, without just cause and due regard to the equities of such
11 recreational vehicle dealer, cancel the franchise of any licensee. The
12 nonrenewal of a franchise with such recreational vehicle dealer or his successor
13 without just provocation or cause, or the refusal to approve a qualified
14 transferee or qualified successor to the dealer-operator as provided for in the
15 franchise agreement, shall be deemed a violation of this Paragraph and shall
16 constitute an unfair cancellation, regardless of the terms or provisions of such
17 franchise. However, at least ninety-days notice shall be given to the recreational
18 vehicle dealer of any cancellation or nonrenewal of a franchise except for a
19 cancellation arising out of the financial default of the recreational vehicle dealer
20 or fraudulent activity of the recreational vehicle dealer principal which results
21 in the conviction of a crime punishable by imprisonment.

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

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

29 (g) To delay, refuse, or fail to deliver recreational vehicles in reasonable
30 quantities relative to the licensee's facilities and sales potential in the relevant

1 market area. This Subparagraph shall not be valid, however, if such failure is
2 caused by acts or causes beyond the control of the manufacturer, distributor,
3 or other such party.

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

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

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

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

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

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

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

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

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

9 (l) To condition the renewal or extension of a franchise on a new
10 recreational vehicle dealer's substantial renovation of the recreational vehicle
11 dealer's place of business or on the construction, purchase, acquisition, or rental
12 of a new place of business by the new recreational vehicle dealer, unless the
13 manufacturer has advised the new recreational vehicle dealer in writing of its
14 intent to impose such a condition within a reasonable time prior to the effective
15 date of the proposed date of renewal or extension, but in no case less than one
16 hundred eighty days, and provided the manufacturer demonstrates the need for
17 such demand in view of the need to service the public and the economic
18 conditions existing in the recreational vehicle industry at the time such action
19 would be required of the new recreational vehicle dealer. As part of any such
20 condition, the manufacturer shall agree, in writing, to supply the recreational
21 vehicle dealer with an adequate supply and marketable model mix of
22 recreational vehicles to meet the sales levels necessary to support the increased
23 overhead incurred by the recreational vehicle dealer by reason of such
24 renovation, construction, purchase, or rental of a new place of business.

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

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

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

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

14 (q) To demand compliance with facilities requirements that include any
15 requirements that a recreational vehicle dealer establish or maintain exclusive
16 office, parts, service or body shop facilities, unless such requirements would be
17 reasonable and justified by business considerations. The burden of proving that
18 such requirements are reasonable and justified by business considerations is on
19 the manufacturer. If the franchise agreement of the manufacturer or
20 distributor requires the approval of the manufacturer or distributor for facility
21 uses or modifications, the manufacturer or distributor shall approve or deny the
22 request in writing within sixty days of receipt of such request.

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

27 (s) To make a change in the area of responsibility described in the
28 franchise agreement or sales and service agreement of a recreational vehicle
29 dealer, without the franchisor or manufacturer giving the recreational vehicle
30 dealer and the commission no less than sixty days prior written notice by

1 certified or registered mail.

2 (t) To induce or coerce, or attempt to induce or coerce, any recreational
3 vehicle dealer to enter into any agreement with such manufacturer, distributor,
4 wholesaler, distributor branch or factory branch or representative thereof, or
5 to do any other act unfair to the recreational vehicle dealer.

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

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

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

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

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

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

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

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

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

19 (c) To use any false or misleading advertisement in connection with his
20 business as such recreational vehicle dealer or recreational vehicle salesman.

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

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

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

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

1 **and void.**

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

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

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

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

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

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

1 buyer's order or recreational vehicle invoice prior to the purchase of a
2 recreational vehicle.

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

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

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

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

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

1 proposed modifications shall be consolidated for hearing. The proposed
2 modification may not take effect pending the determination of the matter.

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

6 (i) The reasons for the proposed modification.

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

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

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

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

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

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

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

26 §1270.21. Indemnification of franchised recreational vehicle dealers

27 Notwithstanding the terms of any franchise agreement, each
28 manufacturer or converter shall indemnify and hold harmless its franchised
29 recreational vehicle dealers against any judgment for damages, including but
30 not limited to court costs and reasonable attorney fees of the recreational

1 vehicle dealer, arising out of complaints, claims, or lawsuits including but not
 2 limited to strict liability, negligence, misrepresentation, express or implied
 3 warranty, or rescission of sale to the extent that the judgment arises out of
 4 alleged defective or negligent manufacture, assembly, or design of recreational
 5 vehicles, parts, or accessories, or other functions by the manufacturer of
 6 converter, which are beyond the control of the recreational vehicle dealer.

7 §1270.22. Payment to recreational vehicles dealers; penalties

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

18 §1270.23. Warranty; compensation; audits of recreational vehicle dealer
 19 records

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

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

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

1 (4) All claims made by the recreational vehicle dealer for compensation
2 under this Subsection shall be paid within thirty days after approval and shall
3 be approved or denied within thirty days after receipt. When any claim is
4 denied, the recreational vehicle dealer shall be notified in writing of the grounds
5 for denial.

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

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

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

30 (a) The claim was false or fraudulent.

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

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

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

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

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

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

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

24 **§1270.24. Recreational vehicle repairs**

25 **Suppliers of mechanical repairs and services for any recreational vehicle**
26 **subject to regulation pursuant to this Chapter shall provide each consumer with**
27 **an itemized bill indicating repairs and services performed, parts replaced, or**
28 **materials used, the total labor charge, and the identity of the mechanic,**
29 **repairman, or supplier who performed the work. However, nothing in this**
30 **Section shall prohibit a supplier of mechanical repairs and services from**

1 charging a service fee for the use of shop supplies such as rags, fender covers,
2 small amounts of fluid, or other items which are not itemized, provided that
3 such fee does not exceed five percent of the total invoice for mechanical repairs
4 or thirty-five dollars, whichever is less.

5 §1270.25. Damage disclosure; recreational vehicles

6 A. Whenever a new recreational vehicle subject to regulation pursuant
7 to this Part is sold to any person, the seller shall notify the purchaser of any
8 body damage or mechanical damage which the recreational vehicle has
9 sustained that exceeds six percent of the manufacturer's wholesale price. Such
10 notice shall be in writing and a copy thereof shall be delivered to the purchaser
11 prior to or simultaneous with transfer of the recreational vehicle title.

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

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

20 §1270.26. Notice regarding recalls; recreational vehicles

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

1 recall notice shall be included in the sales transaction. If the selling recreational
2 vehicle dealer performed the repair, the documents supporting the repair shall
3 also be included in the sales transaction.

4 §1270.27. Sale of water-damaged recreational vehicles

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

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

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

19 §1270.28. Succession; right of first refusal; recreational vehicle dealer

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

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

28 (a) The designated successor gives the manufacturer or distributor
29 written notice of his intention to succeed to the ownership of the recreational
30 vehicle dealer within sixty days of the recreational vehicle dealer's death or

1 **incapacity.**

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

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

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

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

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

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

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

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

1 consummate a sale of the dealership. Any such sale shall be subject to R.S.
2 32:1270.20(1)(d).

3 (b) Upon termination of the franchise pursuant to such refusal, the
4 provisions of R.S. 32:1270.29 shall apply.

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

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

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

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

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

26 (5)(a) The manufacturer or distributor agrees to pay the reasonable
27 expenses, including attorney fees which do not exceed the usual, customary, and
28 reasonable fees charged for similar work done for other clients, incurred by the
29 proposed owner or transferee prior to the manufacturer's or distributor's
30 exercise of its right of first refusal in negotiating and implementing the contract

1 for the proposed sale or transfer of the dealership or dealership assets. Such
2 expenses and attorney fees shall be paid to the proposed new owner or
3 transferee at the time of closing of the sale or transfer for which the
4 manufacturer or distributor exercised its right of first refusal.

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

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

16 §1270.29. Requirements upon termination; penalty; indemnity; recreational
17 vehicles

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

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

30 (b) At fair market value, each undamaged sign owned by the recreational

1 vehicle dealer which bears a trademark or trade name used or claimed by the
2 manufacturer, distributor, or representative if the sign was purchased from or
3 purchased at the request of the manufacturer, distributor, or representative.
4 Fair market value shall be no less than cost of acquisition of the sign by the
5 recreational vehicle dealer.

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

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

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

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

28 C.(1) Upon the involuntary termination, nonrenewal, or cancellation of
29 any franchise by the manufacturer or converter, except for termination,
30 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 was 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 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
 30 Part I of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950. Part I shall be

1 entitled "GENERAL PROVISIONS APPLICABLE TO MOTOR VEHICLES AND
2 RECREATIONAL PRODUCTS".

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____