

2015 Regular Session

ACT No. 435

HOUSE BILL NO. 833 (Substitute for House Bill No. 594 by Representative Henry)

BY REPRESENTATIVE HENRY

1 AN ACT

2 To amend and reenact R.S. 32:1252(12), (23), (25), (26), and (46)(introductory paragraph),
3 1254(G)(4), 1256.1, 1257(C) and (D)(2), 1258(A)(introductory paragraph) and (6),
4 1261(A)(1)(n) and (r), 1264, 1270.5(A), (C), (D)(introductory paragraph), (E), and
5 (J), 1270.17(A)(1)(introductory paragraph) and (c) and (B), and 1270.29(A)(1)(c)
6 and (B), relative to the distribution and sale of vehicles; to provide for definitions;
7 to modify insurance requirements imposed on satellite warranty and repair centers;
8 to provide for specialty vehicle shows; to modify procedural requirements relative
9 to protests; to exempt trailers from certain requirements relative to unauthorized acts;
10 to specify damage disclosure requirements relative to new motor vehicles; to modify
11 procedural requirements relative to the termination or failure to renew a marine
12 dealer franchise; to authorize the Louisiana Motor Vehicle Commission to maintain
13 the license of a marine dealer in limited circumstances; to modify repurchasing
14 requirements relative to both motorcycle dealers and all-terrain vehicle dealers; to
15 modify repurchasing requirements relative to recreational vehicles; and to provide
16 for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. R.S. 32:1252(12), (23), (25), (26), and (46)(introductory paragraph),
19 1254(G)(4), 1256.1, 1257(C) and (D)(2), 1258(A)(introductory paragraph) and (6),
20 1261(A)(1)(n) and (r), 1264, 1270.5(A), (C), (D)(introductory paragraph), (E), and (J),
21 1270.17(A)(1)(introductory paragraph) and (c) and (B), and 1270.29(A)(1)(c) and (B) are
22 hereby amended and reenacted to read as follows:

1 §1252. Definitions

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

5 * * *

6 (12) "Distributor" or "wholesaler" means any person, resident or nonresident,
7 who in whole or in part sells or distributes ~~motor~~ vehicles; or new, remanufactured,
8 reconditioned, or rebuilt motor vehicle motors, ~~or recreational products~~ to ~~motor~~
9 ~~vehicle or recreational products~~ dealers, or who maintains distributor representatives.

10 * * *

11 (23) "Low-speed vehicle" means a four-wheeled, ~~electric powered~~ vehicle
12 with a maximum speed of not less than twenty miles per hour but not more than
13 twenty-five miles per hour that possesses the minimum motor vehicle equipment
14 appropriate for vehicle safety as required by 49 CFR 571.500.

15 * * *

16 (25) "Marine dealer" means any person who holds a bona fide contract or
17 franchise with a manufacturer or distributor of marine products, except for a person
18 engaged in the business of renting or selling new or used watercraft or boats adapted
19 to be powered only by an occupant's energy, and who holds a license as a ~~marine~~
20 recreational products dealer ~~under~~ pursuant to the provisions of this Chapter.

21 (26) "Marine motor" or "marine engine" means a motor that is a component
22 of a marine product that is sold separately from a boat when delivered to the marine
23 dealer by the distributor or manufacturer.

24 * * *

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

1 Duly franchised and licensed recreational products dealers shall be the only persons
2 entitled to sell, publicly solicit, and advertise the sale of new recreational products.

3 * * *

4 §1254. Application for license; requirements for licensure; contents; licenses;
5 franchise filings

6 * * *

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

9 * * *

10 (4)(a) All satellite warranty and repair centers shall, within the contents of
11 their application for a license pursuant to this Chapter, furnish evidence ~~that they~~
12 ~~currently have garage liability insurance or liability protection provided by a liability~~
13 ~~trust fund as authorized by R.S. 22:46(9)(d) covering their place of business.~~ The
14 ~~required insurance policy or liability protection shall have limits of not less than one~~
15 ~~hundred thousand dollars for bodily injury to one person, three hundred thousand~~
16 ~~dollars per accident, and fifty thousand dollars for property damage~~ that the applicant
17 maintains an insurance policy, which complies with the financial responsibility laws
18 of Louisiana, that covers both its place of business and its operation and that the
19 applicant maintains any additional insurance policy determined to be necessary,
20 either relative to the place of business or relative to the nature of the operation sought
21 to be licensed, to protect both the applicant and relevant consumers.

22 (b) ~~Said~~ The insurance or liability protection required pursuant to this
23 Paragraph shall be maintained throughout the period of licensure.

24 (c) ~~Any Failure~~ failure to maintain ~~such~~ the insurance ~~or liability protection~~
25 required pursuant to this Paragraph shall result in the immediate suspension of
26 license; ~~which~~ The suspension shall be effective as of the date of ~~said~~ the failure to
27 maintain ~~said~~ the liability insurance coverage ~~or liability protection~~ and remains
28 effective until proof of the required ~~garage liability insurance or liability protection~~
29 is furnished to the commission. ~~Should~~ If no proof of insurance ~~or liability~~
30 ~~protection provided by a liability trust fund as authorized by R.S. 22:46(9)(d) be is~~

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

3 * * *

4 §1256.1. Regional recreational products or specialty vehicle shows

5 A.(1) Shows where recreational products or specialty vehicles are displayed
6 and promoted for sale are hereby authorized as provided for in this Section, except
7 that no final sale and delivery of a recreational product or specialty vehicle shall
8 occur at ~~such~~ these ~~show~~ shows except by ~~licensed Louisiana~~ dealers ~~whose areas~~
9 ~~of responsibility for the brand of recreational products they represent include the~~
10 ~~location of the show~~ licensed pursuant to this Chapter.

11 (2) When used in this Section, the following words and phrases have the
12 meanings ascribed to them in this Paragraph:

13 (a) "Nonresident" or "non-Louisiana" means a dealer, distributor, or
14 manufacturer who holds a current license in another state.

15 (b) "Producer" means a person who alone or with others assumes the
16 financial responsibility of a recreational product or specialty vehicle show at which
17 recreational products or specialty vehicles are displayed by dealers, manufacturers,
18 ~~or distributors, or converters~~. A producer shall be licensed as a promoter pursuant
19 to R.S. 32:1254.

20 (c) "Product line" means a specific series of recreational vehicle products or
21 specialty vehicles that are identified by a common series trade name or trademark
22 and for which the manufacturer, converter, or dealer agreement authorizes a dealer
23 to sell.

24 (d) "Rally" means an event not opened to the general public held and
25 organized by recreational product clubs of specific products owners or manufacturers
26 of specific products where owners of ~~such~~ the products are members of the club and
27 are invited to participate in the event.

28 (e) "Regional recreational product or specialty vehicle show" or "show"
29 means a controlled event at which a producer charges or barter for booth space or
30 charges spectator entrance, or both, and where three or more recreational product

1 dealers, specialty vehicle dealers, distributors, ~~or~~ manufacturers, or converters
2 exhibit recreational products or specialty vehicles. It does not include a rally or a
3 national recreational product show as defined in R.S. 32:1256.2.

4 B. Participation in regional recreational product or specialty vehicle shows
5 is limited to recreational products dealers, specialty vehicle dealers, distributors, ~~or~~
6 manufacturers, or converters who are licensed in Louisiana pursuant to this Chapter,
7 except as provided in Subsections C and D of this Section.

8 C. Nonresident recreational products dealers, specialty vehicle dealers,
9 distributors, ~~or~~ manufacturers, or converters who hold a current equivalent license
10 in another state may participate in a regional recreational products or specialty
11 vehicle show in Louisiana, ~~provided~~ if all of the following criteria are satisfied:

12 (1) Louisiana recreational products or specialty vehicle dealers, whose area
13 of responsibility for the brands they represent includes the location of the show, have
14 been given first option on space at the show.

15 (2) Louisiana recreational products or specialty vehicle dealers, whose area
16 of responsibility does not include the location of the show, have been given second
17 option on space at the show, provided that the dealers shall not show the same brand
18 of recreational product or specialty vehicle as shown by a participating Louisiana
19 recreational products or specialty vehicle dealer whose area of responsibility
20 includes the location of the show.

21 (3) Non-Louisiana recreational products or specialty vehicle dealers,
22 distributors, and manufacturers shall not show the same brand of recreational
23 products or specialty vehicles as shown by participating Louisiana recreational
24 products or specialty vehicle dealers.

25 (4) Non-Louisiana recreational products or specialty vehicle dealers,
26 distributors, ~~and~~ manufacturers, and converters shall register their participation with
27 the commission not later than ten business days prior to the date of the show. To
28 register, each non-Louisiana recreational products dealer, specialty vehicle dealer,
29 distributor, ~~and~~ manufacturer, and converter shall submit its name, address, a copy

1 of its current equivalent license from the state of its domicile, and a fee of two
2 hundred fifty dollars to the commission.

3 (5) Non-Louisiana recreational products dealers, specialty vehicle dealers,
4 distributors, ~~and~~ manufacturers, and converters shall disclose to show attendees the
5 location of where warranty repairs would be made for products it has on display at
6 the show.

7 D. Notwithstanding any provision of law to the contrary, no recreational
8 vehicle dealer, specialty vehicle dealer, distributor, ~~or~~ manufacturer, or converter
9 shall participate in any regional recreational product or specialty vehicle show where
10 its product line of recreational vehicles or specialty vehicles is represented by a
11 dealer whose area of responsibility includes the location of the show, whether or not
12 that dealer participates in the show.

13 E. The provisions of this Section shall not apply to a rally held in this state.

14 F. The commission may adopt rules and regulations consistent with the
15 provisions of this Section in accordance with the Administrative Procedure Act.

16 * * *

17 §1257. Establishment of new motor vehicle dealerships ~~and/or~~ or relocations;
18 protests; procedure

19 * * *

20 C. The objection shall be in writing, and shall be received by the commission
21 within a fifteen-day period after receipt of the notice. ~~Said~~ The fifteen-day objection
22 period shall be waived upon written notification to the commission from all
23 licensees, who are entitled to object, that ~~said~~ the licensees have no objections to the
24 proposed change or addition for which ~~said~~ the notice of intent was issued. If timely
25 objection is lodged, and prior to the issuance of the license, the commission shall
26 hold a hearing within thirty days after receipt of the objection, or forty-five days after
27 the request is made for the three-member panel, and issue its decision within ninety
28 days after date of ~~said~~ the hearing. Notice of hearing, and an opportunity to
29 participate therein, shall be given to the ~~motor vehicle dealer~~ manufacturer or
30 distributor, to the applicant for the license as a motor vehicle dealer, and to the

1 protesting dealership or dealerships. The absence of a timely protest shall not
2 prevent the commission from considering the effect of the issuance of a license ~~on~~
3 ~~other motor vehicle dealerships located either within or~~ on other motor vehicle
4 dealerships, located either within or outside the community or territory as part of its
5 determination of whether or not the license sought should be issued.

6 D.

7 * * *

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

11 §1258. Denial, revocation, grounds, imposition of a civil penalty, or suspension of
12 license; grounds; expiration

13 A. The commission may, in addition to imposing a civil penalty ~~under~~
14 pursuant to the provisions of this Chapter, deny an application for a license; or
15 revoke or suspend a license after it has been granted for any ~~one~~ of the following
16 reasons:

17 * * *

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

20 * * *

21 §1261. Unauthorized acts

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

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

25 * * *

26 (n) To fail to designate and provide to the commission in writing either the
27 community or territory assigned to a licensee. The provisions of this Subparagraph
28 shall not apply to trailers.

29 * * *

1 (r) To demand compliance with facilities requirements that include any
 2 requirements that a motor vehicle dealer establish or maintain exclusive office,
 3 parts, service or body shop facilities, unless ~~such~~ the requirements would be
 4 reasonable and justified by business considerations. The burden of proving that ~~such~~
 5 the requirements are reasonable and justified by business considerations is on the
 6 manufacturer. If the franchise agreement of the manufacturer or distributor requires
 7 the approval of the manufacturer or distributor for facility uses or modifications, the
 8 manufacturer or distributor shall approve or disapprove such a request in writing
 9 within sixty days of receipt of such request.

10 * * *

11 §1264. Damage disclosure

12 A. Whenever a new motor vehicle subject to regulation pursuant to this
 13 Chapter is sold to any person, the seller shall notify the purchaser of any body
 14 damage or mechanical damage which the vehicle has sustained that exceeds six
 15 percent of the manufacturer's suggested retail price ~~or, in the case of recreational~~
 16 ~~vehicles, six percent of the manufacturer's wholesale price.~~ The notice shall
 17 be in writing and a copy thereof shall be delivered to the purchaser prior to or
 18 simultaneous with transfer of the vehicle title.

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

23 ~~C.~~ This Section shall apply to all instances of vehicular body or mechanical
 24 damage to vehicles and to all actions involving such damage, notwithstanding the
 25 application of other codal, statutory, or regulatory provisions, including but not
 26 limited to Civil Code Articles 2520 et seq.

27 ~~D. The provisions of this Section shall not apply to marine products,~~
 28 ~~motorcycles, or all-terrain vehicles, or recreational vehicles.~~

29 * * *

1 §1270.5. Manufacturer, distributor, or wholesaler repurchase; marine dealer;
2 products

3 A. If any marine dealer enters into a franchise with a manufacturer,
4 distributor, or wholesaler wherein the marine dealer agrees to maintain an inventory
5 of marine products or repair parts, the manufacturer, distributor, or wholesaler shall
6 not terminate or fail to renew ~~such~~ the franchise unless there is a breach of the
7 franchise by the marine dealer and until ninety days after notice of ~~such~~ the intention
8 to terminate, including the breach of the franchise, has been sent by certified mail,
9 return receipt requested, or commercial delivery service with verification of receipt,
10 to the marine dealer and the commission and the marine dealer has failed to correct
11 the breach within such period.

12 * * *

13 C.(1) It shall be unlawful for the manufacturer, wholesaler, or distributor,
14 without due cause and pursuant to its own initiating action, to terminate or fail to
15 renew a franchise, unless the manufacturer, wholesaler, or distributor repurchases the
16 new and unused inventory as provided for in this Section.

17 (2) In the event the marine dealer has new and unused inventory not eligible
18 for repurchase, the license issued by the commission may remain in effect pursuant
19 to the provisions of R.S. 32:1268.2.

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

28 * * *

29 E. If a manufacturer, distributor, or wholesaler does not intend to renew a
30 franchise, the manufacturer, distributor, or wholesaler shall give the marine dealer

1 cost of acquisition of special tools and ~~automotive~~ service equipment by the
2 motorcycle dealer or all-terrain vehicle dealer.

3 * * *

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

9 * * *

10 §1270.29. Requirements upon termination; penalty; indemnity; recreational vehicles

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

18 * * *

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

26 * * *

27 B. Failure to make ~~such~~ the repurchase without just cause shall subject the
28 manufacturer or converter to a penalty of one and one-half percent per month, or

1 fraction thereof, of the inventory value or returnable recreational vehicles, and parts,
 2 signs, special tools, and ~~automotive~~ service equipment, payable to the dealer, as long
 3 as the repurchase is not made.

4 * * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____