

La. R.S. § 32:1251

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§ 32:1251. Declaration of public policy.

The legislature finds and declares that the distribution and sale of motor vehicles and recreational products in the state of Louisiana vitally affects the general economy of the state, the public interest, and the public welfare, and that in order to promote the public interest, and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license those persons enumerated in R.S. 32:1254 and doing business in Louisiana, in order to prevent frauds, impositions, and other abuses upon its citizens, and avoid undue control of the independent motor vehicle dealer and recreational products by their motor vehicle manufacturing and distributive organizations and foster and keep alive vigorous and healthy competition, by prohibiting unfair practices by which fair and honest competition is destroyed or prevented, and to protect the public against the creation or perpetuation of monopolies and practices detrimental to the public welfare, to prevent the practice of requiring the buying, leasing, or renting of special features, appliances, and equipment not desired or requested by the purchaser, lessee, or renter, to prevent false and misleading advertising, to prevent unfair practices by said licensees, to promote the public safety and prevent disruption of the system of distribution of motor vehicles and recreational products to the public and prevent deterioration of facilities for servicing motor vehicles and keeping same safe and properly functioning, and prevent bankrupting of motor vehicle and recreational products dealers and lessors, who might otherwise be caused to fail because of such unfair practices and competition, thereby resulting in unemployment, disruption of leases, and nonpayment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

History

Acts 1985, No. 911, § 1; Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2009, No. 403, § 1, eff. July 7, 2009.

Annotations

LexisNexis® Notes

Notes

Amendment Notes

2009 Amendments. —

2005 Amendments. —**2009 Amendments. —**

The 2009 amendment by No. 403 added “and recreational products” four times and substituted “their motor vehicle manufacturing and distributive organizations” for “the motor vehicle manufacturing and distributive organizations.”

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, substituted “those persons enumerated in R.S. 32:1254 and doing business” for “motor vehicle manufacturers, distributors, dealers, and lessors doing business,” and substituted “said licensees” for “motor vehicle dealers, lessors, manufacturers, and distributing organizations.”

Quoted Statutory Material. —

Acts 2009, No. 403, § 3, provides that “If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.”

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be approved retroactively.”

Case Notes

Administrative Law: Judicial Review: Reviewability: Exhaustion of Remedies

Antitrust & Trade Law: State Civil Action

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Motions to Dismiss

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Federal Arbitration Act: Orders to Compel Arbitration

Governments: State & Territorial Governments: General Overview

Governments: State & Territorial Governments: Licenses

Administrative Law: Judicial Review: Reviewability: Exhaustion of Remedies

Dealers’ motion to dismiss for lack of jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) was granted because manufacturer’s claim, that it could terminate the parties’ agreement, was limited to appropriate administrative procedure before Louisiana Motor Vehicles Commission and to judicial review in state court as specified by La. Rev. Stat. Ann. § 32:1251 et seq. *Volvo Trucks N. Am., Inc. v. Crescent Ford Truck Sales, Inc.*, 2003 U.S. Dist. LEXIS 6842 (E.D. La. Apr. 22, 2003).

Antitrust & Trade Law: State Civil Action

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A car dealership was properly granted a state license to engage in the sale of autos at a temporary location, where the LMVC was statutorily authorized to waive the 60-day notice requirement, if deemed to be in the public interest. *Harris Chevrolet, Inc. v. Louisiana Motor Vehicle Comm'n*, 619 So. 2d 733, 1993 La. App. LEXIS 1958 (La.App. 4 Cir. 1993).

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Plaintiff car manufacturer's assertion of arbitration under 15 U.S.C.S. § 1226 in response to defendant car dealership's state agency petition under La. Rev. Stat. Ann. §§ 32:1251-:1269, to prevent non-renewal of its franchise was insufficient to support federal-question jurisdiction as the actual controversy involved state law, thus, there was no federal subject matter jurisdiction to compel arbitration under 9 U.S.C.S. § 4. *Volvo Trucks N. Am., Inc. v. Crescent Ford Truck Sales, Inc.*, 666 F.3d 932, 2012 U.S. App. LEXIS 384 (5th Cir. La. 2012).

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview

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Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Motions to Dismiss

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Civil Procedure: Alternative Dispute Resolution: Arbitrations: Federal Arbitration Act: Orders to Compel Arbitration

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Governments: State & Territorial Governments: General Overview

Louisiana Motor Vehicle Commission had jurisdiction over the advertiser because the advertiser contracted with dealerships to conduct and/or assist in the sales of automobiles on certain dates, the advertiser's contracts with the dealerships included providing and mailing advertising flyers and providing personnel to assist in the sales, and due to the advertiser's actions, it was treated as a licensee pursuant to La. Rev. Stat. Ann. § 32:1252(18) and was therefore subject to all penalties, including fines as provided in La. Rev. Stat. Ann. § 32:1260 as though it were a properly licensee. *Sales 360, L.L.C. v. La. Motor Vehicle Comm'n*, 976 So. 2d 188, 2007 La. App. LEXIS 2237 (La.App. 5 Cir. 2007).

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Judgment making the Louisiana Motor Vehicle Commission's judgment executory was vacated and set aside, because in order to collect the penalties assessed against the advertiser the Louisiana Motor Vehicle Commission must file suit using ordinary proceedings, and the decision or order, although styled as a judgment, was not a judgment that could be made executory pursuant to La. Code Civ. Proc. Ann. arts. 2781 and 2782. *Sales 360, L.L.C. v. La. Motor Vehicle Comm'n*, 976 So. 2d 188, 2007 La. App. LEXIS 2237 (La.App. 5 Cir. 2007).

Governments: State & Territorial Governments: Licenses

Denial of the applicant's motor vehicle salesman license was affirmed because the case illustrated violations by the applicant of the rules and regulations set out in La. Rev. Stat. Ann. § 32:1251 et seq., when his former corporation encountered financial difficulty, which included non-payment of state taxes, company checks returned due to insufficient funds, stop payment orders on company checks and failure to timely pay amounts due to creditors, and which resulted by the end of a three year period in the corporation's indebtedness of over \$ 700,000. *Goodlow v. La. Motor Vehicle Comm'n*, La. App. 2002-627, 836 So. 2d 297, 2002 La. App. LEXIS 3847 (La.App. 5 Cir. 2002).

A car dealership was properly granted a state license to engage in the sale of autos at a temporary location, where the LMVC was statutorily authorized to waive the 60-day notice requirement, if deemed to be in the public interest. *Harris Chevrolet, Inc. v. Louisiana Motor Vehicle Comm'n*, 619 So. 2d 733, 1993 La. App. LEXIS 1958 (La.App. 4 Cir. 1993).

Producer had to be licensed as a recreational products manufacturer and dealer because the producer (1) described itself as a manufacturer, and (2) offered to sell such products. *Elio Motors, Inc. v. La. Motor Vehicle Comm'n*, 268 So. 3d 1132, 2019 La. App. LEXIS 526 (La.App. 5 Cir.), writ denied, 274 So. 3d 572, 2019 La. LEXIS 1669 (La. 2019).

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Opinion Notes

ADMINISTRATIVE LAW & DECISIONS

Attorney General. —

La. Motor Vehicle Commission is vested with certain statutory and inherent enforcement powers, including authority to review provisions of proposed franchise agreements and to prohibit use of such agreements within this state if they contain unlawful provisions or provisions that do not serve the public interest., OPINION No. 87-739, ; 1987 La. AG LEXIS 175.

R.S. 32:1251, OPINION No. 88-583, ; 1988 La. AG LEXIS 425.

The use of the term Commissioner in Act 603, R.S. 51:1945.1, means the Louisiana Motor Vehicle Commission as the proper administrator of this statute., OPINION NUMBER 92-626, ; 1992 La. AG LEXIS 583.

La. Motor Vehicle Commission is not authorized to purchase a building; however, if it was, it would not be required to go through the capital outlay process, because its funds are not appropriated., OPINION NUMBER 94-140, ; 1994 La. AG LEXIS 158.

La. Housing Finance Agency is authorized to acquire an office building, which would be considered state owned space. LHFA would not be subject to capital outlay process, but does have statutory power to mortgage. In order to

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lease, rather than buy office space, the Agency, out of an abundance of caution, should follow Procurement Code until law can be changed., OPINION NUMBER 94-258, ; 1994 La. AG LEXIS 631.

An auctioneer is not subject to the prohibition contained in R.S. 51:193 and may engage in the auction of new and used motor vehicles on Sunday., OPINION 97-228, ; 1997 La. AG LEXIS 140.

We conclude that it is a violation of R.S. 32:1251 et seq. and the rules and regulations of the Louisiana Motor Vehicle Commission to advertise a monthly payment of a vehicle that is not in stock but available from independent franchise motor vehicles dealers. OPINION 99-253, ; 1999 La. AG LEXIS 385.

The Louisiana Motor Vehicle Commission may grant a dealer's motor vehicle dealer's license to an entity which has an established place of business outside the state of Louisiana., Opinion Number 01-85, ; 2001 La. AG LEXIS 215.

In purchasing school buses, School Board may only contract with a dealer who is licensed pursuant to Louisiana law., Opinion Number 01-145, ; 2001 La. AG LEXIS 223.

It is therefore our opinion that a used motor vehicle dealer that is a limited liability company cannot be a subsidiary corporation so as to fall within the scope of Chapter 6 and therefore must be licensed by the LUMVPC. Opinion No. 04-0253. 2004 La. AG LEXIS 218.

Louisiana law permits repossession of motor vehicles upon default without further notice or judicial process if the creditor is one of those listed in La. R.S. 6:966(C). No distinction is made between in-state and out-of-state secured creditors, so this requirement applies to all secured creditors who wish to avail themselves of the new remedies. Opinion No. 04-0387. 2005 La. AG LEXIS 34. .

Research References & Practice Aids

CROSS REFERENCES

Louisiana Law. —

Exclusions, see La. R.S. 6:969.3.

Application for license; requirements for licensure; contents; licenses; franchise filings, see La. R.S. 32:1254.

Establishment of new motor vehicle dealerships and/or relocations; protests; procedure, see La. R.S. 32:1257.

Agencies transferred from the Department of Economic Development to the office of the governor; agencies placed within the office of the governor, see La. R.S. 36:4.1.

Notice of sale or transfer, see La. R.S. 47:510.

Dealers temporary demonstration and transportation identification plate, see La. R.S. 47:520.

Municipal Law. —

Unified development code. Baton Rouge Code of Ordinance title 7.

TREATISES AND LAW REVIEWS

Louisiana Law Reviews. —

Note: Redhibition: An Argument for the Adoption of Professional Seller Standard for Automobile Dealers. 43 La. L. Rev. 1101 (March, 1983).

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§ 32:1252. Definitions

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

- (1)** “All-terrain vehicle” shall mean any vehicle manufactured for off-road use and issued a manufacturer’s statement or certificate of origin, as required by the commission, that cannot be issued a registration certificate and license to operate on the public roads of this state because, at the time of manufacture, the vehicle does not meet the safety requirements prescribed by R.S. 32:1301 through 1310. This includes vehicles that are issued a title by the Department of Public Safety and Corrections, public safety services, such as recreational and sports vehicles, but it shall not include off-road vehicles used for farm purposes, farm equipment, electric-assisted bicycles, or heavy construction equipment.
- (2)** “Ambulance” means a vehicle used exclusively for providing emergency and nonemergency medical care to an injured or ill person or transporting an injured or ill person, if the vehicle provides all of the following:

 - (a)** A driver’s compartment.
 - (b)** A compartment to accommodate an emergency medical care technician or paramedic and two injured or ill persons so positioned that one of the injured or ill persons can be given intensive life-support during transit.
 - (c)** Equipment and supplies for emergency care of an injured or ill person where the ill person is located or at the scene of an injury-producing incident as well as in transit.
 - (d)** Two-way radio communication capability.
 - (e)** Equipment for light rescue or extrication procedures.
- (3)** “Boat” means a component of a marine product that is not equipped with an outboard or inboard/outboard motor attached thereto.
- (4)** “Boat package” means a boat that is equipped from its manufacturer or distributor with an inboard, outboard, or inboard/outboard motor or engine attached thereto, installed thereon, or shipped or invoiced together as a package. The boat package may include a trailer invoiced from the manufacturer of the boat. For the purposes of this Chapter, the boat package brand shall be determined by the brand of the boat.
- (5)** “Broker” means a person who, for a fee or commission, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle or recreational product, and who is not:

 - (a)** A motor vehicle dealer or recreational products dealer, or bona fide employee of a motor vehicle dealer, when acting on behalf of a motor vehicle or recreational products dealer.

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- (b)** A manufacturer, distributor, convertor, or bona fide employee of a manufacturer, distributor, or convertor, when acting on behalf of a manufacturer, distributor, or convertor.
- (c)** At any point in the transaction, the bona fide owner of the motor vehicle or recreational product involved in the transaction.
- (6)** “Commission” means the Louisiana Motor Vehicle Commission created by this Chapter or its designee.
- (7)**
- (a)** “Community or territory” or “area of responsibility” shall mean the licensee’s area of principal sales and service responsibility as specified by the franchise in effect with any licensee of the commission.
- (b)** The area of responsibility of a licensee shall not be comprised of an area less than the applicable area provided for in Subparagraphs (b) and (c) of this Paragraph, unless approved by the commission pursuant to the provisions of this Chapter, or if, on August 15, 2001, such dealer had an effective contractual agreement for a smaller area of responsibility.
- (c)** A marine dealer’s area of responsibility shall mean the marine dealer’s area of principal sales and service responsibility as specified by the contract, franchise, or selling agreement in effect with the manufacturer or distributor. The marine manufacturer or distributor shall designate and provide to the commission in writing the marine dealer’s area of responsibility when the contract is granted or, should there be contracts in existence on August 15, 2004, without such designation, the commission shall require the manufacturer or distributor to designate the area of responsibility. The manufacturer or distributor shall adopt uniform procedures to establish the area of responsibility that is assigned to a marine dealer. The uniform procedures shall include market research information from identified credible industry sources that project product sales of the brand of marine product for which the contract or franchise agreement is granted. In the absence of such designation by the manufacturer or distributor, or in the event that the area of responsibility designated by the manufacturer or distributor is rejected by the commission and such decision by the commission is affirmed on appeal, the marine dealer’s area of responsibility shall mean either of the following:
- (i)** The area within a fifteen-mile radius of the dealership if the dealership is located in a parish containing a population of three hundred thousand persons or more.
- (ii)** The area within a thirty-mile radius of the dealership if the dealership is located in a parish containing a population of less than three hundred thousand persons.
- (8)** “Converter” or “secondary manufacturer” means a person who prior to the retail sale of motor vehicles, assembles, installs, or affixes a body, cab, or special equipment to a chassis, or who substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle.
- (9)** “Dealer” means any person licensed to sell a motor vehicle, specialty vehicle, or recreational product subject to regulation by this Chapter.
- (10)** “Dealer-operator” shall mean the natural person designated in the franchise as the operator of a motor vehicle dealership.
- (11)** “Designated successor” means the spouse, child, grandchild, parent, brother, or sister, of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer’s ownership interest in the dealership under the terms of the dealer’s will; the spouse, or other person who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership, such designation having been furnished to the manufacturer; or the spouse, or other person who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court in a proceeding interdicting the dealer as the legal

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representative of the dealer's property. The terms shall also include the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

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

(13) "Distributor branch" means a branch office maintained by a person, resident or nonresident, who in whole or in part sells or distributes motor vehicles or recreational products to motor vehicle or recreational products dealers, or for directing or supervising, in whole or in part, its representatives.

(14) "Distributor representative" means any officer, agent, or employee employed by a distributor, distributor branch, or wholesaler.

(15) "Established place or established place of business" shall mean a permanently enclosed building or structure either owned, leased, or rented, which meets local zoning or municipal requirements, and regularly occupied by a person, easily accessible to the public at which the regular business of a licensee will be carried on in good faith, and, at which place of business shall be kept and maintained the books, records, and files necessary to conduct the business; and shall not mean residences, tents, temporary stands, lots, or any temporary quarters.

(16) "Factory branch" means a branch office maintained by a person who fabricates, manufactures, or assembles motor vehicles or recreational products, for the sale of motor vehicles or recreational products to distributors, or for the sale of motor vehicles or recreational products to motor vehicle or recreational products dealers, or for directing or supervising, in whole or in part, its representatives.

(17) "Factory representative" means any officer, agent, or employee employed by a person who fabricates, manufactures, or assembles motor vehicles or recreational products, or by a factory branch, for the purpose of making or promoting the sale of his, its, or their motor vehicles or recreational products, or for supervising or contacting his, its, or their dealers or prospective dealers.

(18) "Financial institution" means any person organized to engage in the business of banking pursuant to the laws of the United States or Title 6 of the Louisiana Revised Statutes of 1950.

(19) "Fire truck" means any one of the following:

(a) A pumper fire apparatus, which is a vehicle equipped with a permanently mounted fire pump of 750 gpm (2850 L/min) rated capacity or greater, a water tank of at least 500 gal (1900 L), and hose body. The primary purpose of this type of apparatus is to combat structural and associated fires.

(b) An initial attack fire apparatus, which is a vehicle equipped with an attack pump of 250 through 700 gpm (950 through 2650 L/min), a water tank, and minimum hose and equipment, that is designed primarily for rapid response and initiating a fire attack on structural, vehicular, or vegetation fires and supporting associated fire department operations.

(c) A mobile water supply fire apparatus, which is a vehicle equipped with a water tank of at least 1000 gal (3800 L) and designed primarily for transporting water to fire emergency scenes to be applied by other vehicles or pumping equipment.

(d) An aerial ladder and elevating platform fire apparatus, which is a vehicle equipped with a permanently mounted, power-operated aerial ladder or with a passenger carrying platform attached to the uppermost boom of a series of telescoping, articulating, or telescoping and articulating booms and designed to provide rescue capability from elevated positions and the positioning of firefighters and elevated master streams for fire suppression tasks.

(20) "Franchise" means any written contract or selling agreement between a motor vehicle or recreational products dealer, a motor vehicle lessor, or a specialty vehicle dealer and a manufacturer, motor vehicle lessor franchisor, or converter of a new motor vehicle or specialty vehicle or its distributor or factory branch by which the motor vehicle or recreational products dealer, motor vehicle lessor, or

specialty vehicle dealer is authorized to engage in the business of selling or leasing the specific makes, models, or classifications of new motor vehicles, recreational products, or specialty vehicles marketed or leased by the manufacturer, motor vehicle lessor franchisor, or converter and designated in the franchise agreement or any addendum thereto. For purposes of this Chapter, any written modification, amendment, or addendum to the original franchise agreement, which changes the rights and obligations of the parties to the original franchise agreement, shall constitute a new franchise agreement, effective as of the date of the modification, amendment, or addendum.

(21) "Lease facilitator" means a person, other than a motor vehicle or recreational products dealer or a bona fide employee of a motor vehicle or recreational products dealer, or a motor vehicle lessor or a bona fide employee of a motor vehicle lessor, who engages in one or both of the following activities:

(a) Holds himself out to any person as a "motor vehicle leasing company" or "motor vehicle leasing agent" or uses a similar title, for the purpose of soliciting or procuring a person to enter into a contract or agreement to become the lessee of a motor vehicle or recreational product that is not, and will not be, titled in the name of and registered to the lease facilitator.

(b) Otherwise solicits a person to enter into a contract or agreement to become a lessee of a vehicle that is not, and will not be, titled in the name of and registered to the lease facilitator, or who is otherwise engaged in the business of securing lessees or prospective lessees of motor vehicles or recreational products that are not, and will not be, titled in the name of and registered to the facilitator.

(22) "Licensee" means any person who is required to be licensed by the commission pursuant to the provisions of this Chapter.

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

(24) "Manufacturer" means any person, resident or nonresident, who fabricates, manufactures, or assembles motor vehicles, recreational products, or new, remanufactured, reconditioned, or rebuilt motor vehicle or marine motors.

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

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

(27) "Marine product" means a new or used watercraft, boat, marine motor, and a boat or watercraft trailer. The term also includes an outboard motor or a boat with an inboard/outboard motor attached to it. The term shall not mean a watercraft or marine motor if the watercraft or marine motor is used primarily for commercial or governmental purposes or a new or used watercraft or boat adapted to be powered only by the occupant's energy.

(28) "Marine product line" means a particular model of a marine product designed for recreational or commercial use on water.

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

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

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

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

(33) “Motor home” means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four of the following permanently installed systems which meet American National Standards Institute and National Fire Protection Association standards in effect as of the date of manufacture, two of which shall be systems specified below in Subparagraph (a), (d) or (e) of this Paragraph:

(a) Cooking facilities.

(b) Ice box or mechanical refrigerator.

(c) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.

(d) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

(e) Heating or air conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.

(f) A one hundred ten/one hundred fifteen volt alternating current electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

(34) “Motor vehicle” means any motor driven car, van, or truck required to be registered which is used, or is designed to be used, for the transporting of passengers or goods for public, private, commercial, or for hire purposes.

(35)

(a) “Motor vehicle dealer” means any person, not excluded by Subparagraph (b) of this Paragraph who holds a bona fide franchise in effect with a manufacturer or distributor of new motor vehicles, and a license under the provisions of this Chapter or a subsidiary of any such entity. Such duly franchised and licensed motor vehicle dealers shall be the sole and only persons entitled to sell, publicly solicit, and advertise the sale of new motor vehicles as such.

(b) The term “motor vehicle dealer” does not include any of the following:

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

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

(iii) Employees of persons enumerated in Item (i) of this Subparagraph when engaged in the specific performance of their duties as such employees.

(iv) Financial institutions engaged in the sale of motor vehicles for the collection of debts secured thereby.

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- (a)** “Motor vehicle lessor” shall mean any person, not excluded by Subparagraph (b) of this Paragraph, engaged in the motor vehicle, recreational products, or specialty vehicle leasing or rental business. It shall also include a subsidiary of any such entity.
- (b)** The term “motor vehicle lessor” does not include any of the following:
- (i)** Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment or order of any court.
 - (ii)** Public officers while performing or in the operation of their duties.
 - (iii)** Employees of persons, corporations, or associations enumerated in Item (i) of this Subparagraph when engaged in the specific performance of their duties as such employees.
 - (iv)** Financial institutions engaged in the leasing of motor vehicles, recreational products, or specialty vehicles.
- (c)** Any motor vehicle lessor who rents on a daily basis motor vehicles, recreational products, or specialty vehicles not of the current year or immediate prior year models that have been titled previously to an ultimate purchaser, and who is otherwise not required to obtain a license under this Chapter, shall be subject to the regulation of the Louisiana Used Motor Vehicle Commission.
- (37)** “Motor vehicle lessor agent” means any natural person, other than a daily rental person, employed by a motor vehicle lessor licensed by the commission whose duties include the leasing, renting or offering for lease or rent motor vehicles, recreational products, or specialty vehicles on behalf of said motor vehicle lessor.
- (38)** “Motor vehicle lessor franchisor” means any person who grants a franchise to any person granting the right to lease or rent a motor vehicle, recreational product, or specialty vehicle under its trade name, trademark, or service mark or to sell used motor vehicles, recreational products, or specialty vehicles formerly a part of its rental fleet.
- (39)** “Motor vehicle salesman” means any natural person employed by a licensee of the commission whose duties include the selling, leasing, or offering for sale or lease, financing or insuring motor vehicles, recreational products, or specialty vehicles on behalf of said licensee.
- (40)** “New marine product” means a marine product, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (41)** “New motorcycle or all-terrain vehicle” means a motorcycle or all-terrain vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (42)** “New motor vehicle,” “new recreational product,” or “new specialty vehicle” means a motor vehicle, recreational product, or specialty vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (43)** “New recreational vehicle” means a recreational vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (44)** “Person” shall mean any natural or juridical person, firm, association, corporation, trust, partnership, limited liability partnership, professional liability corporation, or limited liability company or any other legal entity.
- (45)** “Recreational products” means new and unused motorcycles, all-terrain vehicles, marine products, recreational vehicles, and trailers as defined in this Chapter.
- (46)** “Recreational products dealer” means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, buys, sells, brokers, exchanges, auctions, offers, or attempts to negotiate a sale or exchange of an interest in recreational products and who is engaged wholly or in part in the business of buying and selling recreational products in the state of Louisiana.

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- (a)** The term shall also include anyone not licensed under Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, who sells recreational products and who rents on a daily basis recreational products, not of the current year or immediate prior year models, that have been titled previously to an ultimate purchaser.
- (b)** “Recreational products dealer” shall not include any of the following:
- (i)** Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
 - (ii)** Public officers while performing their official duties.
 - (iii)** Employees of recreational products dealers when engaged in the specific performance of their duties as such employees.
 - (iv)** Mortgagees or secured parties as to sales of recreational products constituting collateral on a mortgage or security agreement.
 - (v)** Insurance companies.
 - (vi)** Auctioneers or auction houses who are not engaged in the auction of recreational products as the principal part of their business, including but not limited to the following auctions: estate auctions, bankruptcy auctions, farm equipment auctions, or government auctions.
- (47)** “Recreational vehicle” means a motorized or towable vehicle that combines transportation and temporary living quarters for travel, recreation, and camping. For purposes of this Chapter, a “recreational vehicle” includes new and used motor homes, new and used travel trailers, new and used fifth-wheel travel trailers, new and used folding camper trailers, and slide-in truck campers.
- (48)** “Recreational vehicle dealer” means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, buys, sells, brokers, exchanges, auctions, offers, or attempts to negotiate a sale or exchange of an interest in recreational vehicles and who is engaged wholly or in part in the business of buying and selling recreational vehicles in the state of Louisiana and who holds a license as a recreational products dealer under the provisions of this Chapter.
- (49)** “Recreational vehicle salesman” means any natural person employed by a licensee of the commission whose duties include the selling, leasing, or offering for sale or lease, financing or insuring recreational vehicles on behalf of said licensee and who holds a motor vehicle salesman license under the provisions of this Chapter.
- (50)** “Retail sale” or “sale at retail” means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle, recreational product, or specialty vehicle to an ultimate purchaser for use as a consumer.
- (51)** “Satellite warranty and repair center” means a motor vehicle repair facility, other than at a motor vehicle dealer franchised location, approved by a manufacturer or distributor and authorized to perform warranty and other repairs on motor vehicles.
- (52)** “Selling agreement” means any written contract or agreement between a marine dealer and a manufacturer, or its distributor or factory branch, by which the marine dealer is authorized to engage in the business of selling or leasing the specific makes, models, or classifications of marine products marketed or leased by the manufacturer, and designated in the selling agreement or any addendum thereto. For the purposes of this Paragraph, any written modification, amendment, or addendum to the original selling agreement that changes the rights and obligations of the parties to the original selling agreement shall constitute a new selling agreement, effective as of the date of the modification, amendment, or addendum.
- (53)** “Specialty vehicle” means a motor vehicle manufactured by a second stage manufacturer by purchasing motor vehicle components, including frames and drive trains, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer

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warranty unimpaired, to a limited commercial market rather than the consuming public. Specialty vehicle includes ambulances, fire trucks, garbage trucks, hearses, limousines, school buses, street sweepers, vacuum trucks, wreckers, and other similar limited purpose vehicles. Specialty vehicle does not include motor homes as defined in this Chapter.

(54) “Specialty vehicle dealer” means any person who holds a bona fide franchise in effect with a converter or second stage manufacturer of specialty vehicles and a license under the provisions of this Chapter or a subsidiary of any such entity. Such duly franchised and licensed specialty vehicle dealer shall be the sole person entitled to sell, publicly solicit, and advertise the sale of specialty vehicles.

(55) “Subsidiary” shall mean any person engaged in the selling or leasing of motor vehicles, recreational products, or specialty vehicles, in which a majority of the ownership interests of such entity is owned by a holder of a license issued by the commission.

(56) “Trailer” means every single vehicle without motive power designed for carrying property or passengers wholly on its own structure, drawn by a motor vehicle which carries no part of the weight and load of the trailer on its own wheels and having one or more load carrying axles. “Trailer” includes but is not limited to utility trailers, boat trailers, recreational trailers, semitrailers, livestock trailers, and dump trailers.

(57) “Ultimate purchaser” means, with respect to any new motor vehicle, recreational product, or specialty vehicle, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new motor vehicles, recreational products, or specialty vehicles for purposes other than resale. “Ultimate purchaser” shall not include a person who purchases a motor vehicle or recreational product for purposes of altering or remanufacturing the motor vehicle or recreational product for future resale.

(58)

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

(b) “Used marine dealer” shall not include any of the following.

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

(ii) Public officers while performing their official duties.

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

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

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

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

(59) “Used marine product” means a marine product, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

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

(b) “Motorcycle or all-terrain vehicle dealer” shall not include any of the following:

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- (i) Receivers, trustees, administrators, executors, guardians, or other 19 persons appointed by or acting under the judgment or order of any court.
 - (ii) Public officers while performing their official duties.
 - (iii) Employees of motorcycle or all-terrain vehicle dealers when engaged in the specific performance of their duties as such employees.
 - (iv) Mortgagees or secured parties as to sales of motorcycles or all-terrain vehicles constituting collateral on a mortgage or security agreement.
 - (v) Insurance companies.
 - (vi) Auctioneers or auction houses who are not engaged in the auction of motorcycles or all-terrain vehicles as the principal part of their business, including but not limited to the following auctions: estate auctions, bankruptcy auctions, farm equipment auctions, or government auctions.
- (60)** “Used marine product facility” means any facility which is owned and operated by a licensee of the commission and offers for sale used marine products.
- (61)** “Used motorcycle or all-terrain vehicle” means a motorcycle or all-terrain vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (62)**
- (a) “Used motorcycle or all-terrain vehicle dealer” means any person, whose business is to sell, or offer for sale, display, or advertise used motorcycles or all-terrain vehicles, or any person who holds a license from the commission and is not excluded by Subparagraph (b) of this Paragraph.
 - (b) “Used motorcycle or all-terrain vehicle dealer” shall not include any of the following:
 - (i) Receivers, trustees, administrators, executors, guardians, or other 18 persons appointed by or acting under the judgment or order of any court.
 - (ii) Public officers while performing their official duties.
 - (iii) Employees of persons, corporations, or associations enumerated in the definition of “used motorcycle or all-terrain vehicle dealer” when engaged in the specific performance of their duties as such employees.
 - (iv) Mortgagees or secured parties as to sales of motorcycles or all-terrain vehicles constituting collateral on a mortgage or security agreement and who do not maintain a used car lot or building with one or more employed motorcycle or all-terrain vehicle salesman.
 - (v) Insurance companies who sell motorcycles or all-terrain vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motorcycle or all-terrain vehicle salesman.
 - (vi) Used motorcycle or all-terrain vehicle dealers licensed pursuant to R.S. 32:781 et seq.
- (63)** “Used motorcycle or all-terrain vehicle facility” means any facility which is owned and operated by a licensee of the commission and offers for sale used motorcycles or all-terrain vehicles.
- (a) The term shall also include anyone not licensed under Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, who sells recreational vehicles and who rents on a daily basis recreational vehicles, not of the current year or immediate prior year models, that have been titled previously to an ultimate purchaser.
 - (b) “Recreational vehicle dealer” shall not include any of the following:
 - (i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

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- (ii) Public officers while performing their official duties.
 - (iii) Employees of recreational vehicle dealers when engaged in the specific performance of their duties as such employees.
 - (iv) Mortgagees or secured parties as to sales of recreational vehicles constituting collateral on a mortgage or security agreement.
 - (v) Insurance companies.
 - (vi) Auctioneers or auction houses who are not engaged in the auction of recreational vehicles as the principal part of their business, including but not limited to the following auctions: estate auctions, bankruptcy auctions, farm equipment auctions, or government auctions.
- (64)** “Used motor vehicle” means a motor vehicle, recreational product, or specialty vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (65)**
- (a) “Used motor vehicle dealer” means any person, whose business is to sell, or offer for sale, display, or advertise used motor vehicles, recreational products, or specialty vehicles, or any person who holds a license from the commission and is not excluded by Subparagraph (b) of this Paragraph.
 - (b) “Used motor vehicle dealer” shall not include any of the following:
 - (i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
 - (ii) Public officers while performing their official duties.
 - (iii) Employees of persons, corporations, or associations enumerated in the definition of “used motor vehicle dealer” when engaged in the specific performance of their duties as such employees.
 - (iv) Mortgagees or secured parties as to sales of motor vehicles constituting collateral on a mortgage or security agreement and who do not maintain a used car lot or building with one or more employed motor vehicle salesman.
 - (v) Insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesman.
 - (vi) Used motor vehicle dealers licensed pursuant to R.S. 32:781 et seq.
- (66)** “Used motor vehicle facility” means any facility which is owned and operated by a licensee of the commission and offers for sale used motor vehicles, recreational products, or specialty vehicles.
- (67)** “Used recreational vehicle” means a recreational vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (68)**
- (a) “Used recreational vehicle dealer” means any person, whose business is to sell, or offer for sale, display, or advertise used recreational vehicles, or any person who holds a license from the commission and is not excluded by Subparagraph (b) of this Paragraph.
 - (b) “Used recreational vehicle dealer” shall not include any of the following:
 - (i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
 - (ii) Public officers while performing their official duties.

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

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

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

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

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

(70) “Vehicle” means any motor vehicle, specialty vehicle, or recreational product subject to regulation by this Chapter.

(71) “Wrecker” means any motor vehicle equipped with a boom or booms, winches, slings, tilt beds, or similar equipment designed for towing or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

History

Acts 1985, No. 911, § 1; Acts 1986, No. 552, § 1; Acts 1987, No. 775, § 1; Acts 1989, No. 262, § 1; Acts 1989, No. 634, § 1; Acts 1990, No. 283, § 1, eff. July 5, 1990; Acts 1991, No. 937, § 1; Acts 1995, No. 51, § 1, eff. June 9, 1995; Acts 1999, No. 1100, §§ 1, 2, eff. Aug. 15, 1999; Acts 2001, No. 1054, § 1, eff. Aug. 15, 2001; Acts 2001, No. 1067, § 1, eff. Aug. 15, 2001; Acts 2004, No. 250, § 1, eff. Aug. 15, 2004; Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2006, No. 352, § 1, eff. Aug. 15, 2006; Acts 2009, No. 403, § 1, eff. July 7, 2009; Acts 2010, No. 1036, § 1, eff. Aug. 15, 2010; Acts 2011, 1st Ex. Sess., No. 9, § 1, eff. June 12, 2011; Acts 2012, No. 326, § 1, eff. Aug. 1, 2012; Acts 2013, No. 53, § 1, eff. Aug. 1, 2013; Acts 2013, No. 61, § 1, eff. Aug. 1, 2013; Acts 2013, No. 158, § 1, eff. June 7, 2013; Acts 2014, No. 111, § 1, effective August 1, 2014; Acts 2015, No. 435, § 1, effective August 1, 2015; Acts 2016, No. 530, § 1, effective August 1, 2016; Acts 2018, No. 231, § 1, effective August 1, 2018; Acts 2018, No. 487, § 1, effective August 1, 2018; Acts 2020, No. 152, § 1, effective August 1, 2020; Acts 2021, No. 94, § 1, effective August 1, 2021.

Annotations

LexisNexis® Notes

Notes

Amendment Notes

2021 Amendments. —

LSLI 2018 Amendments. —

2018 Amendments. —

2016 Amendments. —

2015 Amendments. —

2014 Amendments. —

LSLI 2013 Amendments. —

2013 Amendments. —

LSLI 2012 Amendments. —

2012 Amendments. —

2011 1st Extraordinary Session Amendments. —

LSLI 2010 Amendments. —

2010 Amendments. —

LSLI 2009 Amendments. —

2009 Amendments. —

2006 Amendments. —

LSLI 2005 Amendments. —

2005 Amendments. —

2004 Amendments. —

2001 Amendments. —

1999 Amendments. —

2021 Amendments. —

The 2021 amendment substituted “or marine motor if the watercraft or marine motor is used” for “designed for use” in the third sentence of (27).

LSLI 2018 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq. and Acts 2018, No. 206 § 7, the Louisiana State Law Institute alphabetized the definitions in the section.

2018 Amendments. —

The 2018 amendment added “watercraft designed for use primarily for commercial or governmental purposes or a” in the third sentence of (27).

The 2018 amendment added “but does not include towable equipment as defined in this Chapter” at the end of (8) and (56); rewrote the former first and second sentences of (56) as (56); in (56), substituted “including but” for “Trailer’ includes but is”; and added (73) and (74).

2016 Amendments. —

The 2016 amendment by Act No. 530, in (27), substituted “marine motor” for “or motor designed for recreational or commercial use on water” in the first sentence and deleted “watercraft designed for use primarily for commercial purposes or” following “not mean a” in the last sentence; and made stylistic changes.

2015 Amendments. —

The 2015 amendment by Act No. 435, in (12), substituted “vehicles or new” for “motor vehicles, new” and “to dealers” for “or recreational products to motor vehicle or recreational products dealers”; deleted “electric powered” following “a four-wheeled” in (23); substituted “recreational products dealer pursuant to” for “marine dealer under” in (25); inserted “or 'marine engine'” in (26); and added the second sentence of (46).

2014 Amendments. —

The 2014 amendment by Act No. 111 inserted (71); and redesignated former (71) as (72).

LSLI 2013 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute designated the first sentence of subdivision (7) as (7)(a) and redesignated the subsequent subdivisions within (7) accordingly; substituted “Low-speed vehicle” for “Low speed vehicle” in subdivision (23); and substituted “CFR” for “C.F.R.” in subdivision (23) of R.S. 32:1252, as amended by Acts 2013, No. 53.

2013 Amendments. —

The 2013 amendment by Act No. 53 substituted “Subparagraph (b)” for “Subparagraphs (b) and (c)” in (7)(a); and deleted former (7)(c), which read: “A motorcycle or all-terrain vehicle dealer’s area of responsibility shall mean the area within at least a thirty-mile radius of the location of his dealership.”

The 2013 amendment by Act No. 61 added “or trailer” or variants in (8); inserted (23) and redesignated the remaining subsections accordingly; substituted “this Chapter” for “Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950” in present (31)(a), (46)(a), and (48)(a); substituted “this Section” for “this Chapter” in the last sentence of present (53); inserted “tow dollies” in the second sentence of present (56); and made a stylistic change.

The 2013 amendment by Act No. 158 rewrote (1), which formerly read: “‘All-terrain vehicle’ commonly referred to as ‘ATV’ means any vehicle with three or more low-pressure flotation-type tires designed by the manufacturer or any vehicle altered to be used as an off-road recreational vehicle. ‘All-terrain vehicle’ shall also include all-terrain vehicle trailers. ‘All-terrain vehicle’ shall not include golf carts.”

LSLI 2012 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute renumbered R.S. 32:1252(1) through (69) as amended by Acts 2012, No. 326, § 1 in the following manner: (9.1) - (26) as (10 - (27), (27) as (29), (28) - (34) as (32) - (38), (35) as (41), (36) - (39) as (43) - (46), (40) as (49), (41) as (50), (42) - (46) as (52) - (56), (47) - (49) as (63) - (65), (50) as (69), (51) as (70), (52) as (28), (53) as (39), (54) as (51), (55) as (58), (56) as (57), (57) as (59), (58) as (30), (59) as (31), (60) as (40), (61) - (63) as (60) - (62), (64) as (42), (65) as (47), (66) as (48), (67) - (69) as (66) - (68).

2012 Amendments. —

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The 2012 amendment by Act No. 326 inserted the second sentence of (4); inserted "selling" following "contract or" in the first sentence of (19); and added (52) through (69).

2011 1st Extraordinary Session Amendments. —

The 2011 amendment by No. 9 substituted "three hundred thousand" for "four hundred thousand" in (7)(b)(i) and (7)(b)(ii).

LSLI 2010 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute alphabetized the provisions of La. R.S. 32:1252, as amended by Acts 2010, No. 1036, § 1.

2010 Amendments. —

The 2010 amendment by No. 1036 added "not required to be registered" in (27); and added (51) and (52).

LSLI 2009 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute alphabetized the provisions of R.S. 32:1252, as amended by Acts 2009, No. 403, § 1.

2009 Amendments. —

The 2009 amendment by No. 403 rewrote the section.

2006 Amendments. —

Acts 2006, No. 352, § 1, effective August 15, 2006, deleted "and unused" following "motor vehicles or new" in (8); deleted "or unused" following "distributor of new" in (22)(a); and substituted "subsidiary of any such entity" for "subsidiary corporation of any such corporation" in (23)(a).

LSLI 2005 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute (LSLI) substituted "Subparagraph (a), (d), or (e)" for "Subparagraphs (a), (d), or (e)" in (20), as amended by Acts 2005, No. 500, § 1.

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, rewrote the section to provide for the regulation of the distribution and sale of motor vehicles in Louisiana in order to protect the public interest and public welfare.

2004 Amendments. —

Acts 2004, No. 250, § 1, effective August 15, 2004, added the last sentence in (10).

2001 Amendments. —

Acts 2001, No. 1054, § 1, effective August 15, 2001, added “except, however, a duly licensed motor vehicle dealer is not required to obtain a speciality [sic] vehicle dealer license provided such motor vehicle dealer modifies or converts only those motor vehicles for which he is duly franchised and licensed to sell” to the end of (2.2) and to the end of (19.3).

Acts 2001, No. 1067, § 1, effective August 15, 2001, inserted “remanufactured, reconditioned, or rebuilt” in (4), substituted “unused motor vehicles or new and unused, remanufactured, reconditioned, or rebuilt motor vehicle motors” for “unused motor vehicles and new and unused motor vehicle motors” in (11).

1999 Amendments. —

Acts 1999, No. 1100, § 1, effective August 15, 1999, added (1) and (1.1) and redesignated the remaining subsections accordingly; added (2.2); inserted “in the franchise” in (3); added (9.2); in (10) inserted a comma following “dealer,” inserted “a motor vehicle lessor, or a specialty vehicle dealer,” inserted a comma following “manufacturer,” inserted “motor vehicle lessor franchisor, or converter,” inserted “or specialty vehicle,” inserted “motor vehicle,” inserted a comma following “dealer,” inserted “motor vehicle lessor, or specialty vehicle dealer,” inserted “or leasing,” inserted “or specialty vehicles,” inserted “or leased,” inserted a comma following “manufacturer,” inserted “motor vehicle lessor franchisor, or converter”; added (10.1); in (13) deleted the former last sentence, which read: “Such term specifically does not include any chassis for the purpose of bus body or fire truck body installation and ultimate use as a bus or a fire truck, if the seller of such bus assumes warranty liability that would otherwise be the obligation of a motor vehicle dealer authorized to sell that make of vehicle” following “motorcycles”; added (15.1); inserted “or specialty vehicles” in (16); added (19.1) through (19.3) and (24).

Quoted Statutory Material. —

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be approved retroactively.”

Acts 2009, No. 403, § 3, provides that “If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.”

Case Notes

Governments: State & Territorial Governments: Licenses

Insurance Law: Business Insurance: Fidelity Insurance: General Overview

Governments: State & Territorial Governments: Licenses

Louisiana Motor Vehicle Commission had jurisdiction over the advertiser because the advertiser contracted with dealerships to conduct and/or assist in the sales of automobiles on certain dates, the advertiser's contracts with the dealerships included providing and mailing advertising flyers and providing personnel to assist in the sales, and due to the advertiser's actions, it was treated as a licensee pursuant to La. Rev. Stat. Ann. § 32:1252(18) and was therefore subject to all penalties, including fines as provided in La. Rev. Stat. Ann. § 32:1260 as though it were a properly licensee. *Sales 360, L.L.C. v. La. Motor Vehicle Comm'n*, 976 So. 2d 188, 2007 La. App. LEXIS 2237 (La.App. 5 Cir. 2007).

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In La. Rev. Stat. Ann. § 30:1252, Louisiana Legislature intended, by the use of the term “person” to include the State of Louisiana and its political subdivisions. *Aetna Casualty & Surety Co. v. Lively-Culpepper Chevrolet Oldsmobile, Inc.*, 609 So. 2d 1055, 1992 La. App. LEXIS 3748 (La.App. 2 Cir. 1992).

La. Rev. Stat. Ann. § 32:1251 et seq., which provides that a car dealer must be enfranchised by a manufacturer or distributor in order to obtain a license to sell new or unused vehicles, was constitutional. *Louisiana Motor Vehicle Com. v. Wheeling Frenchman*, 103 So. 2d 464, 1958 La. LEXIS 1206 (La. 1958).

Producer had to be licensed as a recreational products manufacturer and dealer because the producer (1) described itself as a manufacturer, and (2) offered to sell such products. *Elio Motors, Inc. v. La. Motor Vehicle Comm'n*, 268 So. 3d 1132, 2019 La. App. LEXIS 526 (La.App. 5 Cir.), writ denied, 274 So. 3d 572, 2019 La. LEXIS 1669 (La. 2019).

Insurance Law: Business Insurance: Fidelity Insurance: General Overview

In La. Rev. Stat. Ann. § 30:1252, Louisiana Legislature intended, by the use of the term “person” to include the State of Louisiana and its political subdivisions. *Aetna Casualty & Surety Co. v. Lively-Culpepper Chevrolet Oldsmobile, Inc.*, 609 So. 2d 1055, 1992 La. App. LEXIS 3748 (La.App. 2 Cir. 1992).

Opinion Notes

ADMINISTRATIVE LAW & DECISIONS**Attorney General. —**

It is unlawful for any unlicensed person, firm, association, corporation or trust to sell, solicit and advertise the sale of new and unused motor vehicles as such., OPINION No. 87-302, ; 1987 La. AG LEXIS 478.

R.S. 32:1251, OPINION No. 88-583, ; 1988 La. AG LEXIS 425.

The use of the term Commissioner in Act 603, R.S. 51:1945.1, means the Louisiana Motor Vehicle Commission as the proper administrator of this statute., OPINION NUMBER 92-626, ; 1992 La. AG LEXIS 583.

Discussion regarding licensing requirements for vehicle lessors., OPINION NUMBER 95-438, ; 1995 La. AG LEXIS 336.

An auctioneer is not subject to the prohibition contained in R.S. 51:193 and may engage in the auction of new and used motor vehicles on Sunday., OPINION 97-228, ; 1997 La. AG LEXIS 140.

A motor vehicle dealer may operate or move its vehicles upon public roads without registering the vehicle or attaching number plates if displaying a placard with the dealers name, address and “In Transit”., OPINION 97-266, ; 1997 La. AG LEXIS 272.

We conclude that it is a violation of R.S. 32:1251, et, seq. and the rules and regulations of the Louisiana Motor Vehicle Commission to advertise a monthly payment of a vehicle that is not in stock but available from independent franchise motor vehicles dealers. OPINION 99-253, ; 1999 La. AG LEXIS 385.

The Louisiana Motor Vehicle Commission may grant a dealer’s motor vehicle dealer’s license to an entity which has an established place of business outside the state of Louisiana., Opinion Number 01-85, ; 2001 La. AG LEXIS 215.

In purchasing school buses, School Board may only contract with a dealer who is licensed pursuant to Louisiana law., Opinion Number 01-145, ; 2001 La. AG LEXIS 223.

It is therefore our opinion that a used motor vehicle dealer that is a limited liability company cannot be a subsidiary corporation so as to fall within the scope of Chapter 6 and therefore must be licensed by the LUMVPC. Opinion No. 04-0253. 2004 La. AG LEXIS 218.

Research References & Practice Aids

CROSS REFERENCES

Louisiana Law. —

Scope and definitions, see La. R.S. 6:965.

Acts to lessen or eliminate competition prohibited, see La. R.S. 6:969.24.1.

Audible and visual signals on certain vehicles, see La. R.S. 32:318.

Application for certificates of title; exception; salvage title; antique vehicles; reconstructed title, see La. R.S. 32:707.

Definitions, see La. R.S. 32:781.

Definitions, see La. R.S. 47:301.

Definitions, see La. R.S. 51:1941.

Municipal Law. —

Alcoholic beverages > definitions. Shreveport Code of Ordinance § 10-1.

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LexisNexis® Louisiana Annotated Statutes > Louisiana Revised Statutes > Title 32. Motor vehicles and traffic regulation (Chs. 1 — 18) > Chapter 6. Distribution and Sale of Motor Vehicles (Pts. 1 — 5) > Part 1. General Provisions Applicable to Motor Vehicles and Recreational Products (§§ 32:1251 — 32:1269)

§ 32:1254. Application for license; requirements for licensure; contents; licenses; franchise filings; exceptions

A. The following persons shall be licensed by the commission in order to engage in business in the state of Louisiana, regardless of whether or not said person maintains or has a place or places of business in this state, and it is a violation of this Chapter to operate without first obtaining a license:

- (1) Manufacturers.
- (2) Motor vehicle dealers.
- (3) Factory branches.
- (4) Distributors or wholesalers.
- (5) Distributor branches.
- (6) Used motor vehicle facilities operated by new motor vehicles dealers, motor vehicle lessors, specialty vehicles dealers, or recreational products dealers.
- (7) Satellite warranty and repair centers.
- (8) Brokers.
- (9) Motor vehicle lessor franchisors.
- (10) Motor vehicle lessors.
- (11) Motor vehicle lease facilitators.
- (12) Converters or secondary manufacturers.
- (13) Specialty vehicle dealers.
- (14) Factory representatives.
- (15) Distributor representatives.
- (16) Motor vehicle salesmen.
- (17) Motor vehicle lessor agents.
- (18) Recreational products dealers.
- (19) Auto shows, trade shows, and exhibitions, including promoters.

B.

- (1)
 - (a) All applications for license or licenses shall be accompanied by the appropriate fee or fees in accordance with the schedule set out in R.S. 32:1255. All such fees shall be nonrefundable. Except

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

1st Commission District—April 1 through March 31.

2nd Commission District—May 1 through April 30.

3rd Commission District—June 1 through May 31.

4th Commission District—July 1 through June 30.

5th Commission District—August 1 through July 31.

6th Commission District—September 1 through August 31.

7th Commission District—October 1 through September 30.

8th Commission District—November 1 through October 31.

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

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

C. General licensing and compliance requirements for all license applicants and holders:

(1) All applications for licenses required to be obtained under provisions of this Chapter shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the commission and furnished to such applicants, and shall contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for.

(2) The commission shall require, in such application or otherwise, information relating to the applicant's business integrity, whether the applicant is primarily engaged in the pursuit, avocation, or business for which a license or licenses is applied, the particular qualifications and requirements pertaining to the license or licenses sought, and whether the applicant is able to properly conduct the business for which a license or licenses is applied, and such other pertinent information consistent with the safeguarding of the public interest and public welfare.

(3) In the performance of its duties under this Section, the commission shall have the authority to obtain from the Department of Public Safety and Corrections and other governmental agencies information relating to the criminal records of applicants for licenses under this Chapter. The information in such records shall be kept confidential by the commission.

(4) All licensees must operate from an established place of business properly zoned in the municipality in which the licensee operates.

(5) All licenses and renewals are issued subject to all provisions of this Chapter and rules of the commission in effect upon date of issuance, as well as any subsequent amendments to, enactments of, or repeals of any provisions in this Chapter and rules which may become effective during the term of the license.

(6) Any person serving in more than one capacity or having more than one place where such business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

(7) The license issued to any licensee shall specify the location of the licensee's established place of business.

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(8) In determining whether or not to issue a license to any applicant, the commission shall consider the information provided above, the declaration of public policy set forth in R.S. 32:1251, as well as all of the following:

(a) Business integrity of the applicant.

(b) Ability of the applicant to conduct properly the business for which the license is sought.

(c) Effect on the business for which the license is sought and the effect on the consuming public in the community or territory and the state of Louisiana.

(9) All applications for license pursuant to this Chapter shall include evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain insurance coverage or until proof of the required insurance is furnished to the commission. If no proof is furnished to the commission within thirty days, the license of such licensee shall be revoked.

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

(11) No license issued under this Chapter shall be transferable.

(12) At least sixty days prior to the receipt by the commission of an application by a licensee for the establishment of new location required to be licensed under the provisions of this Chapter, for a change of location, change in corporate ownership or majority ownership, change in the name of licensee, change in the makes, models, or classifications of vehicles designated in the franchise or any addendum thereto and manufactured, distributed, or sold, the addition of makes, models, or classifications of vehicles designated in the franchise or any addendum thereto and manufactured, converted, distributed, or sold, or a change in the identity of the designated dealer-operator of a licensee the commission must receive a written notice from the person seeking to effect such change. This sixty-day notice shall provide such information as the commission in its discretion may require. The sixty-day notice may be waived by the commission, when, in its discretion, the commission feels that such waiver would be in the best interest of the public welfare.

D. Additional licensing and compliance requirements for manufacturers, distributors, wholesalers, converters or secondary manufacturers, distributors or wholesalers, factory branches and distributor branches:

(1) The commission shall require, in all manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch and distributor branch applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All manufacturers, converters or secondary manufacturers, distributors or wholesalers, factory branches and distributor branches must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All manufacturers, converters or secondary manufacturers, distributors or wholesalers, factory branches and distributor branches must have a usable telephone at the place of business, the number of which should be listed on the application for license, and also listed in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4)

(a) The license issued to each manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch or distributor branch shall specify the location of the office or factory, or branch thereof, and the makes, models, or classifications of motor vehicles, recreational products,

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or specialty vehicles to be manufactured, distributed or converted. The license issued to any manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch or distributor branch shall specify the location of such manufacturer's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a licensee, or a change by a licensee in the makes, models, or classifications, requiring an addendum to a franchise agreement, of motor vehicles, recreational products, or specialty vehicles manufactured, distributed, or converted, or the addition of a make of motor vehicle or recreational product manufactured, distributed, or converted shall require a new license and application therefor.

(5) In determining whether or not to issue a license to a manufacturer, converter or secondary manufacturer, distributor or wholesaler, factory branch and distributor branch, the commission shall also consider the financial standing of the applicant and the adequacy of the applicant's established place of business for the purpose for which a license is sought.

(6) Repealed by Acts 2013, No. 61, § 2, effective August 1, 2013.

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

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

(1) The commission shall also require, in all motor vehicle and recreational products dealer applications or otherwise, information relating to the applicant's financial standing and established place of business.

(2) All motor vehicle and recreational products dealers must provide a suitable office and have a permanently affixed sign in front of the establishment of offices which denotes that vehicles are offered for sale, lease or rent at the location to which the sign is affixed.

(3) All motor vehicle and recreational products dealers must have a usable telephone at the place of business, the number of which should be listed on the application for license and in a local directory accessible to the public. The commission must be notified of any change in the telephone number.

(4)

(a) Applications for license as motor vehicle and recreational products dealer must, in addition to the foregoing, also be accompanied by the filing with the commission of a bona fide contract or franchise in effect between the applicant and a manufacturer or distributor of the new motor vehicle or vehicles or recreational product or products proposed to be dealt in for a specific location in the state of Louisiana.

(b) However, if such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise, identify same by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise.

(5)

(a) The applicant must also furnish satisfactory evidence that the applicant maintains adequate space in the building or structure wherein the applicant's established business is conducted for the display of new motor vehicles or recreational products, together with adequate facilities for the repair and servicing of motor vehicles or recreational products and the storage of new parts and accessories for the repair and servicing.

(b) Notwithstanding the provisions of Subparagraph (a) of this Paragraph and subject to written approval by the franchisor, adequate facilities for the repair and servicing of motor vehicles may be

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physically located in a building directly across a dedicated municipal street, but not more than one thousand feet from the applicant's established place of business.

(6) The application shall also identify the individual named as dealer-operator, and shall contain such information as the commission deems necessary to enable it to fully determine his qualifications and eligibility to serve in that capacity.

(7) All motor vehicle or recreational products dealer applications for license pursuant to this Chapter shall include evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance shall be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. Should no proof of insurance be furnished to the commission within thirty days, the license of such licensee shall be revoked.

(8) In determining whether or not to issue a license to a motor vehicle or recreational products dealer, the commission shall also consider the financial standing of the motor vehicle or recreational products dealer, the adequacy of the motor vehicle or recreational products dealer's established place of business for the purpose for which a license is sought, and the effect on the motor vehicle or recreational products sale or leasing/rental business and the consuming public in the state of Louisiana.

(9)

(a) The license issued to each motor vehicle or recreational products dealer shall specify the location of the office and the makes, models, or classifications of motor vehicles or recreational products to be sold, and the name of the dealer-operator. The license issued to a motor vehicle dealer shall specify the licensee's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a licensee, or a change by a licensee in the makes, models, or classifications, requiring an addendum to a franchise agreement, of motor vehicles or recreational products sold, or the addition of a make of motor vehicles or recreational products sold or a change in the designation of the dealer-operator shall require a new license and application therefor.

(c) Notwithstanding the provisions of Subparagraph (b) of this Paragraph, a licensed motor vehicle or recreational products dealer shall not be required to submit an application for and obtain a new license if ownership interests in the dealership changes among existing family member owners, as long as the identity of the majority owner does not change, no additional persons are added as owners, and all changes in ownership interest are declared in the renewal application. For the purposes of this Subparagraph, "family member owners" shall include the majority owner's children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, parents, his spouse, the parents of his spouse, and his grandchildren.

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

(10)

(a) Before any motor vehicle or recreational products dealer license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as

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principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

(11) Upon execution of a franchise, or addendum thereto, the motor vehicle or recreational product dealer shall immediately file with the commission a copy of the franchise or addendum.

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

(1) The commission shall also require, in all used motor vehicle facility applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All used motor vehicle facilities licensed by the commission must provide a suitable office and have a permanently affixed sign in front of the establishment, which denotes that vehicles are offered for sale at the location to which the sign is affixed.

(3) All used motor vehicle facilities licensed by the commission must have a useable telephone at the place of business, the number of which should be listed on the application for license and in a local directory accessible to the public. The commission must be notified of any change in the telephone number.

(4) All used motor vehicle facilities licensed by the commission shall furnish, in their application for license pursuant to this Chapter, evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance shall be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. Should no proof of insurance be furnished to the commission within thirty days, the license of such licensee shall be revoked.

(5) In determining whether or not to issue a license to a used motor vehicle facility licensed by the commission, the commission shall also consider the financial standing of the used motor vehicle facility and the adequacy of the used motor vehicle facility's established place of business for the purpose for which a license is sought, the effect on the used motor vehicle sales business and the consuming public in the state of Louisiana.

(6)

(a) The license issued to any used motor vehicle facility licensed by the commission shall specify the location of such licensee's established place of business.

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(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a used motor vehicle facility licensed by the commission shall require a new license and application therefor.

(7) Applicants for and holders of used motor vehicle dealer licenses shall obtain and maintain bonds in accordance with the following provisions:

(a) Before any used motor vehicle dealer license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of ten thousand dollars, shall be delivered to the commission. If a used motor vehicle dealer operates from more than one location, a bond in the amount of ten thousand dollars shall be required for each location.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

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

(1) The commission shall require, in all satellite warranty and repair center applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All satellite warranty and repair centers must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All satellite warranty and repair centers must have a usable telephone at the place of business, the number of which should be listed on the application for license and in a local directory accessible to the public. The commission must be notified of any change in the telephone number.

(4)

(a) All satellite warranty and repair centers shall, within the contents of their application for a license pursuant to this Chapter, furnish evidence that the applicant maintains an insurance policy, which complies with the financial responsibility laws of Louisiana, that covers both its place of business and its operation and that the applicant maintains any additional insurance policy determined to be necessary, either relative to the place of business or relative to the nature of the operation sought to be licensed, to protect both the applicant and relevant consumers.

(b) The insurance required pursuant to this Paragraph shall be maintained throughout the period of licensure.

(c) Any failure to maintain the insurance required pursuant to this Paragraph shall result in the immediate suspension of license. The suspension shall be effective as of the date of the failure to maintain the insurance coverage and remains effective until proof of the required insurance is furnished to the commission. If no proof of insurance is furnished to the commission within thirty days, the license of the licensee shall be revoked.

(5)

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(a) The license issued to any satellite warranty and repair center shall specify the location of such satellite warranty and repair center's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a satellite warranty and repair center shall require a new license and application therefor.

(6) In determining whether or not to issue a license to a satellite warranty and repair center, the commission shall also consider the adequacy of the satellite warranty and repair center's established place of business for the purpose for which a license is sought.

(7) Applicants for and holders of satellite warranty and repair center licenses shall obtain and maintain bonds in accordance with the following provisions:

(a) Before any satellite warranty and repair center license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

H. Additional licensing and compliance requirements for brokers.

(1) The commission shall require, in all broker applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All brokers must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All brokers must have a usable telephone at the place of business, the number of which should be listed on the application for license, and also in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4)

(a) The license issued to any broker shall specify the location of such broker's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a broker shall require a new license and application therefor.

(5) In determining whether or not to issue a license to a broker, the commission shall also consider the financial standing of the broker and the adequacy of the broker's established place of business for the purpose for which a license is sought, the effect on the motor vehicle brokerage business and the consuming public in the state of Louisiana.

(6) Applicants for and holders of broker licenses shall obtain and maintain bonds in accordance with the following provisions:

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(a) Before any broker license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period; however, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

(7) A person acting as a broker in a transaction involving the sale for purposes other than resale, of a used motor vehicle must be licensed and regulated under the provisions of Chapter 4-B of Title 32 of the Louisiana Revised Statutes of 1950.

I. Additional licensing and compliance requirements for motor vehicle lessor franchisors.

(1) The commission shall require, in all motor vehicle lessor franchisor applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All motor vehicle lessor franchisors must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All motor vehicle lessor franchisors must have a usable telephone at the place of business, the number of which should be listed on the application for license, and listed in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4)

(a) The license issued to any motor vehicle lessor franchisor shall specify the location of such motor vehicle lessor franchisor's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a motor vehicle lessor franchisor shall require a new license and application therefor.

(5) In determining whether or not to issue a license to a motor vehicle lessor franchisor, the commission shall also consider the financial standing of the motor vehicle lessor franchisor and the adequacy of the motor vehicle lessor franchisor's established place of business for the purpose for which a license is sought.

(6) Upon execution of a franchise, or addendum thereto, with a motor vehicle lessor, the motor vehicle lessor franchisor shall immediately file with the commission a copy of the franchise or addendum.

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

(1) The commission shall also require, in all motor vehicle lessor applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

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(2) All motor vehicle lessors must provide a suitable office and have a permanently affixed sign in front of the establishment of offices which denotes that vehicles are offered for lease or rent at the location to which the sign is affixed.

(3) All motor vehicle lessors must have a usable telephone at the place of business, the number of which should be listed on the application for license, and listed in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4)

(a) Applications for license as motor vehicle lessor must, in addition to the foregoing, also be accompanied by the filing with the commission of any bona fide contract or franchise in effect between the applicant and a motor vehicle lessor franchisor of the new motor vehicle or vehicles proposed to be dealt in for a specific location in the state of Louisiana.

(b) However, if such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise, identify same by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise.

(5) All motor vehicle lessors, in their application for license pursuant to this Chapter, shall include evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance must be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. Should no proof of insurance be furnished to the commission within thirty days, the license of such licensee shall be revoked.

(6)

(a) The license issued to a motor vehicle lessor shall specify the licensee's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a motor vehicle lessor shall require a new license and application therefor.

(7) In determining whether or not to issue a license to a motor vehicle lessor, the commission shall also consider the financial standing of the motor vehicle lessor, the adequacy of the motor vehicle lessor's established place of business for the purpose for which a license is sought, and the effect on the motor vehicle leasing/rental business and the consuming public in the state of Louisiana.

K. Additional licensing and compliance requirements for motor vehicle lease facilitators.

(1) The commission shall also require, in all motor vehicle lease facilitator applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All motor vehicle lease facilitators must provide a suitable office and have a permanently affixed sign in front of the establishment.

(3) All motor vehicle lease facilitators must have a useable telephone at the place of business, the number of which should be listed on the application for license, and also in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4) In determining whether or not to issue a license to a motor vehicle lease facilitator, the commission shall also consider the financial standing of the motor vehicle lease facilitator and the adequacy of the

motor vehicle lease facilitator's established place of business for the purpose for which a license is sought.

(5)

(a) The motor vehicle lease facilitators shall specify the location of such motor vehicle lease facilitator's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a motor vehicle lease facilitator, shall require a new license and application therefor.

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

(1) The commission shall also require, in all specialty vehicle dealer applications or otherwise, information relating to the applicant's financial standing and whether the applicant has an established place of business.

(2) All specialty vehicle dealers must provide a suitable office and have a permanently affixed sign in front of the establishment of offices which denotes that vehicles are offered for sale at the location to which the sign is affixed.

(3) All specialty vehicle dealers must have a usable telephone at the place of business, the number of which should be listed on the application for license, and also in a local directory accessible to the public, where applicable. The commission must be notified of any change in the telephone number.

(4)

(a) Applications for license as a specialty vehicle dealer must, in addition to the foregoing, also be accompanied by the filing with the commission of a bona fide contract or franchise in effect between the applicant and a converter or secondary manufacturer of the specialty vehicle or vehicles proposed to be dealt in for a specific location.

(b) However, if such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise, identify same by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise.

(5) All specialty vehicle dealers, in their application for license pursuant to this Chapter, shall include evidence the applicant has insurance covering its place of business and its operation that complies with the financial responsibility laws of this state and as determined by the applicant and its insurance agent, that is necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state. Such insurance must be maintained throughout the period of licensure. Failure to maintain such insurance shall result in the immediate suspension of license, which suspension shall be effective as of the date of the failure to maintain such insurance coverage until proof of the required insurance is furnished to the commission. If no proof of insurance is furnished to the commission within thirty days, the license of such licensee shall be revoked.

(6)

(a) The license issued to each specialty vehicle dealer shall specify the location of the office and the makes, models, or classifications of specialty vehicles to be sold. The license issued to a specialty vehicle dealer shall specify the licensee's established place of business.

(b) A change of location, or a change in corporate ownership or majority ownership, or a change in the name of a licensee, or a change by a licensee in the makes, models or classifications, requiring an addendum to a franchise agreement of specialty vehicles sold, or the addition of a make of motor vehicle sold shall require a new license and application therefor.

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(7) In determining whether or not to issue a license to a specialty vehicle dealer, the commission shall also consider the financial standing of the specialty vehicle dealer and the adequacy of the specialty vehicle dealer's established place of business for the purpose for which a license is sought.

(8) Applicants for and holders of specialty vehicle dealer licenses shall obtain and maintain bonds in accordance with the following provisions:

(a) Before any specialty vehicle dealer license is issued to an applicant under the provisions of this Chapter, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in Louisiana as surety, in the sum of twenty thousand dollars, shall be delivered to the commission.

(b) Such bond shall be in a form to be approved by the commission and shall be conditioned so that the licensee shall comply with the conditions of any written contract made by such licensee and shall not violate any of the provisions of this Chapter or any other law of Louisiana in the conduct of the business for which he is licensed. Such bond shall be made payable to the secretary of the Department of Public Safety and Corrections or to his successor in office, for the use, benefit, and indemnity of any persons who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period and a new bond or a proper continuation certificate shall be delivered to the commission at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of such bond. Failure to maintain such bond shall result in the immediate suspension of the license, which suspension shall be effective as of the date of the failure to maintain the bond until proof of the required bond is furnished to the commission. Should no proof of a bond be furnished to the commission within thirty days, the license shall be revoked.

M. Additional licensing and compliance requirements for motor vehicle salesmen, motor vehicle lessor agents, factory representatives, and distributor representatives.

(1) Every motor vehicle salesman, factory representative, distributor representative, and motor vehicle lessor agent shall have his license upon his person when engaged in his business and shall display same upon request. The name of said licensee's employer shall be stated in said license.

(2) In determining whether or not to issue a license to any motor vehicle salesman or motor vehicle lessor agent, the commission shall also consider the effect of such licensure on the motor vehicle leasing/rental business and the consuming public.

N. Any person who sells or offers to sell new motor vehicles, recreational products, or specialty vehicles, or leases, rents, or offers to lease or rent new motor vehicles, recreational products, or specialty vehicles, or conducts and designs advertising or participates in special sales events on behalf of licensees, and which is not a licensee of the commission shall, nonetheless, be subject to the provisions of Chapter 6 of Title 32 and the rules and regulations of the commission.

O. Notwithstanding the provisions of this Chapter and the provisions of Subsection N of this Section to the contrary, this Chapter shall not apply to specialty vehicle dealers who manufacture wheeled, armored personnel carriers for sale to law enforcement agencies and who do not maintain or have a place of business in this state. The provisions of this Subsection shall expire on July 1, 2018.

P. Notwithstanding any provision of law to the contrary and the provisions of Subsection N of this Section, this Chapter shall not apply to the procurement or sale of towable equipment as defined in this Chapter.

History

Acts 1985, No. 911, § 1; Acts 1985, No. 422, § 1, eff. July 10, 1985; Acts 1987, No. 450, § 1; Acts 1987, No. 775, §§ 1, 2; Acts 1989, No. 262, § 1; Acts 1989, No. 477, § 1; Acts 1989, No. 634, § 1; Acts 1990, No. 124, § 1; Acts 1990, No. 283, § 1, eff. July 5, 1990; Acts 1991, No. 296, § 1, eff. July 2, 1991; Acts 1992, No. 258, § 1, eff. June 10, 1992; Acts 1993, No. 536, §§ 1, 2; Acts 1995, No. 51, §§ 1, 2, eff. June 9, 1995; Acts 1997, No. 87, § 1, eff.

Aug. 15, 1997; Acts 1997, No. 211, § 1, eff. Aug. 15, 1997; Acts 1999, No. 785, § 1, eff. Aug. 15, 1999; Acts 1999, No. 981, § 1, eff. Aug. 15, 1999; Acts 1999, No. 1100, § 1, eff. Aug. 15, 1999; Acts 2001, No. 1054, § 1, eff. Aug. 15, 2001; Acts 2001, No. 1067, § 1, eff. Aug. 15, 2001; Acts 2001, No. 1154, § 1, eff. Aug. 15, 2001; Acts 2003, No. 251, § 1, eff. Aug. 15, 2003; Acts 2003, No. 917, § 1, eff. Aug. 15, 2003; Acts 2004, No. 250, § 1, eff. Aug. 15, 2004; Acts 2004, No. 276, § 1, eff. Aug. 15, 2004; Acts 2004, No. 348, § 1, eff. Aug. 15, 2004; Acts 2004, No. 409, § 1, eff. Aug. 15, 2004; Acts 2004, No. 670, § 1, eff. Aug. 15, 2004; Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2006, No. 352, § 1, eff. Aug. 15, 2006; Acts 2007, No. 27, § 1, eff. June 18, 2007; Acts 2008, No. 415, § 2, eff. Jan. 1, 2009; Acts 2009, No. 403, § 1, eff. July 7, 2009; Acts 2010, No. 1036, § 1, eff. Aug. 15, 2010; Acts 2011, No. 89, § 1, eff. Aug. 15, 2011; Acts 2013, No. 61, § 2, eff. Aug. 1, 2013; Acts 2015, No. 435, § 1, effective August 1, 2015; Acts 2017, No. 45, § 1, effective June 3, 2017; Acts 2018, No. 487, § 1, effective August 1, 2018; Acts 2018, No. 142, § 1, effective August 1, 2018.

Annotations

LexisNexis® Notes

Notes

Amendment Notes

2018 Amendments. —

2017 Amendments. —

2015 Amendments. —

2013 Amendments. —

2011 Amendments. —

2010 Amendments. —

2009 Amendments. —

2007 Amendments. —

2006 Amendments. —

LSLI 2005 Amendments. —

2005 Amendments. —

LSLI 2004 Amendments. —

2004 Amendments. —

2003 Amendments. —

2001 Amendments. —

1999 Amendments. —

2018 Amendments. —

The 2018 amendment redesignated former (E)(5) as (E)(5)(a); in (E)(5)(a), substituted “accessories for the repair and servicing” for “accessories for same”; and added (E)(5)(b).

The 2018 amendment added (P).

2017 Amendments. —

The 2017 amendment added "exceptions" in the section heading; and added (O).

2015 Amendments. —

The 2015 amendment by Act No. 435, rewrote (G)(4).

2013 Amendments. —

The 2013 amendment by Act No. 61 repealed (D)(6).

2011 Amendments. —

The 2011 amendment by No. 89 deleted “and nonresident exhibitors” from the end of (A)(19); and added “or recreational products” or similar language three times in (E)(9)(d).

2010 Amendments. —

The 2010 amendment by No. 1036, in (A)(19), added “trade shows, and exhibitions” and substituted “promoters” for “promotors”; rewrote the second sentence of (B)(1)(a), which formerly read: “In the event any application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant”; added (B)(1)(b); substituted “license of any recreational products dealer shall expire December 31, 2010, and the license of any licensee” for “license of any recreational products dealer or any licensee” in (B)(2); rewrote (C)(9), (E)(7), (F)(4), (J)(5) and (L)(5); substituted “persons” for “corporations” in (C)(10); added “distributors, wholesalers” in the introductory language of (D) and in (D)(7); substituted “motor vehicle” for “motor vehicle or recreational products” or variants in (E)(9)(d); in (N), added “or conducts and designs advertising or participates in special sales events on behalf of licensees” and deleted “which pertain to the regulation of advertising”; and made related changes.

2009 Amendments. —

The 2009 amendment by No. 403 added “or recreational products dealers” and its variant in (A)(6) and (D)(7); added (A)(18) and (A)(19); added “recreational products dealer or any” in (B)(2); added the last sentence in (C)(9); added “recreational products” and its variant in (D)(4)(a), (D)(4)(b), (E)(11) and (N); added (D)(6)(c); added “and recreational products” throughout (E); added the last sentence of (E)(7); added “or recreational products” in (E)(8), (E)(9)(a) through (E)(9)(d), and (E)(10)(a); substituted “recreational products” for “specialty vehicles” in (E)(9)(a) and (E)(9)(b); added “or Products” in (E)(9)(d); in (E)(11), deleted “with a motor vehicle dealer, motor vehicle lessor, or specialty vehicle dealer” preceding “the motor vehicle” and added “or recreational product”; added the last sentence of (F)(4); and made a related change.

2007 Amendments. —

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Acts 2007, No. 27, § 1, effective June 18, 2007, throughout (C), (E), (F) and (G), inserted “or liability protection,” inserted “or liability protection provided by a liability trust fund as authorized by R.S. 22:5(9)(d),” substituted “required insurance policy or liability protection shall have limits” for “policy must have limits,” and substituted “Said insurance or liability protection shall be maintained” for “Said insurance must be maintained.”

2006 Amendments. —

Acts 2006, No. 352, § 1, effective August 15, 2006, substituted “any bona fide contract” for “a bona fide contract” in (J)(4)(a).

LSLI 2005 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute (LSLI) made stylistic changes in (C)(12), as amended by Acts 2005, No. 500.

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, rewrote the section to clarify existing law by providing a list of persons who must be licensed by the commission in order to engage in business in Louisiana.

LSLI 2004 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute merged (N)(3)(f) as amended by Acts 2004, No. 348, § 1 with (N)(3)(f) as amended by Acts 2004, No. 670, § 1.

2004 Amendments. —

Acts 2004, No. 250, § 1, effective August 15, 2004, added last sentence in (N)(1)(a).

Acts 2004, No. 276, § 1, effective August 15, 2004, added (N)(3)(k)(i)(aa) and (bb); and added (N)(3)(k)(ii).

Acts 2004, No. 348, § 1, effective August 15, 2004, substituted “R.S. 22:681” for “R.S. 22:1406(F)” in (N)(3)(f)(iii); and in (N)(3)(f)(iv), inserted “immediately,” and inserted “upon return of the vehicle.”

Acts 2004, No. 409, § 1, effective August 15, 2004, substituted the present text for “However, notwithstanding any other provision of law to the contrary, a manufacturer licensed under this Chapter may authorize warranty and other repair or maintenance services to be performed at any location of a motor vehicle dealer licensed under this Chapter which holds a franchise from any affiliate or subsidiary of the school bus manufacturer” in (N)(1)(d).

Acts 2004, No. 670, § 1, effective August 15, 2004, substituted “twenty-five days” for “seven days” in (N)(3)(f)(i); substituted “R.S. 22:681” for “R.S. 22:1406(F)” in (N)(3)(f)(iii); and added the last sentence in (N)(3)(f)(v).

2003 Amendments. —

Acts 2003, No. 251, § 1, effective August 15, 2003, in (N)(6)(b), added “for any reason including but not limited to failure to meet performance standards”; in (N)(6)(c), deleted “without ninety days’ notice prior thereto, unless such cancellation arises out of financial default of the motor vehicle dealer or fraudulent activity of the dealer principal which results in the conviction of a crime punishable by imprisonment” following “franchise of any motor vehicle dealer”, added the second sentence, inserted “or solely for failure . . . or other geographic area” in the third

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sentence, and added the final clause beginning: “however, at least ninety days notice . . .”; and added the last sentence in (U)(1).

Acts 2003, No. 917, § 1, effective August 15, 2003, added (N)(1)(d).

2001 Amendments. —

Acts 2001, No. 1054, § 1, effective August 15, 2001, redesignated (N)(6)(o) as (N)(6)(o)(i) through (N)(6)(o)(v)(dd); added (N)(3)(j); substituted “motor vehicle lessor; used motor vehicle dealer; or speciality vehicle dealer or converter, when modifying or selling those vehicles he is duly franchised and licensed to sell” for “motor vehicle lessor or used motor vehicle dealer” in (N)(1)(c), inserted “one or all of the following applies” in (N)(6)(o)(v), substituted “The” for “the” in (N)(6)(o)(v)(aa) and (N)(6)(o)(v)(bb), rewrote (N)(6)(o)(v)(cc), which read: “or were unnecessary to correct a defective condition,” rewrote (N)(6)(o)(v)(cc), which read: “or that the dealer failed to reasonably substantiate or properly submit the claim,” deleted “is not arbitrary and” following “violation of this Section if the failure” in the last sentence of (N)(6)(r), rewrote (N)(6)(t)(ii), which read: “To attempt to coerce, or coerce, compliance with facilities requirements that include any requirements that a motor vehicle dealer establish or maintain exclusive office, parts, service or body shop facilities, when such requirements would be unreasonable, considering current economic conditions, and are not otherwise justified by reasonable business considerations. The burden of proving that such requirements are unreasonable, considering current economic conditions, and are not otherwise justified by reasonable business considerations is on the dealer. If the franchise agreement of the manufacturer or distributor requires the approval of the manufacturer or distributor for facility uses or modifications, the manufacturer or distributor will approve or disapprove such a request in writing within sixty days of receipt of such request.”

Acts 2001, No. 1067, § 1, effective August 15, 2001, substituted “requested by the purchaser; however, this prohibition” for “requested by the purchaser; provided, however, that this prohibition” in (N)(3)(a), rewrote (N)(3)(b), which read: “To represent and sell as a new and unused motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle, or,” substituted “vehicle salesman/agent” for “vehicle salesman/agent; or” in (N)(3)(c), added “or other written notification signed by the purchaser” in (N)(3)(f), in (N)(3)(f)(iii), substituted “conditional sale not be completed” for “conditional sale not be complete,” and added “However, the purchaser shall be responsible . . . extent provided for in R.S. 22:1406(F).”

Acts 2001, No. 1154, § 1, effective August 15, 2001, added (K)(2)(b).

1999 Amendments. —

Acts 1999, No. 785, § 1, effective August 15, 1999, added “successions; sale or transfer of dealership” to the section heading; added (N)(5)(f); rewrote (N)(5)(h), which read: “To hold a franchised dealer liable for any sums determined to be owed to a manufacturer, distributor, wholesaler, distributor branch, or factory branch by virtue of an audit of the books of such franchised dealer, when said sums owed are a result of transactions which occurred more than two years prior to the commencement date of such an audit, unless such sums are owed as a result of fraudulent practices of such franchise dealers. Provided however, a dealer shall not be held liable by virtue of an audit for failure to retain parts for a period in excess of six months”; substituted “To sell or offer to sell a new or unused motor vehicle directly to a consumer except as provided in this Chapter; or to compete” for “To compete at the beginning of (N)(5)(l); in (N)(5)(l)(iii), substituted “a person independent of a manufacturer” for “an independent person,” and inserted a comma following “subject to loss in the dealership”; substituted “motor vehicle[s]” for “automobile[s]” in (N)(5)(m); substituted “motor vehicle dealer” for “dealer” twice in (N)(5)(p); added (N)(6)(r) through (x); substituted “sixty days” for “six months” in (P)(4); inserted (Q); redesignated former (Q) and (R) as (R) and (S), respectively; inserted (S)(1), and in this paragraph, added the third sentence, and redesignated former (S)(1) and (S)(2) as (S)(2) and (S)(3), respectively.

Acts 1999, No. 981, § 1, effective August 15, 1999, added (N)(3)(g), (N)(3)(h), (N)(4)(e) and (N)(4)(f).

Acts 1999, No. 1100, § 1, effective August 15, 1999, in (F)(3) inserted a comma following “objection,” inserted “or forty-five days after the request is made for the three-member panel”; in (I)(1) inserted “converter, motor vehicle lessor franchisor,” inserted “speciality vehicle dealer,” deleted “or” following “representative,” inserted “broker,” inserted “or lease facilitator”; added (I)(2); added (I)(3); in (K)(1) inserted “speciality vehicle dealer,” inserted “converter,” inserted “or speciality vehicles”; in (K)(2) inserted “or speciality vehicles,” inserted “converted,” inserted “converted”; in (M) substituted “dealer, speciality vehicle dealer, manufacturer, distributor,” for “dealers’,” deleted “licenses” following “distributor,” inserted “broker, satellite warranty and repair center,” substituted “dealer” for “dealers”; substituted “dealer, speciality vehicle dealer, satellite warranty and repair center, or broker” for “dealer’s” in (M)(1); substituted “dealer” for “dealer’s” in (M)(2)(a); added (M)(2)(b); in (M)(3) inserted a comma following “sale,” inserted “repair”; in (N)(1)(a) inserted “speciality vehicle dealer,” inserted “motor vehicle lessor franchisor, broker, lease facilitator, satellite warranty and repair center,” inserted “converter”; inserted “speciality vehicle dealer” in (N)(3); added (N)(3)(g); added (N)(4)(e); added (N)(6)(r); added (N)(7) and redesignated the remaining paragraphs accordingly; added (N)(8); added (N)(9); in (R)(1) substituted “franchise” for “motor vehicle dealer agreement,” substituted “franchisee’s” for “motor vehicle dealer’s,” substituted “franchisee” for “motor vehicle dealer”; added (S) through (W).

Quoted Statutory Material. —

Acts 2009, No. 403, § 3, provides that “If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.”

Acts 2007, No. 27, § 2, provides that “This Act is interpretive and shall apply to any liability trust fund arrangement covered by the provisions of this Act which is in existence on or prior to the effective date of this Act.”

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Case Notes

Antitrust & Trade Law: State Civil Action

Business & Corporate Law: Distributorships & Franchises: Causes of Action: Breach of Contract

Evidence: Demonstrative Evidence: General Overview

Governments: State & Territorial Governments: General Overview

Governments: State & Territorial Governments: Licenses

Torts: Business Torts: Fraud & Misrepresentation: Negligent Misrepresentation: General Overview

Antitrust & Trade Law: State Civil Action

A car dealership was properly granted a state license to engage in the sale of autos at a temporary location, where the LMVC was statutorily authorized to waive the 60-day notice requirement, if deemed to be in the public interest. *Harris Chevrolet, Inc. v. Louisiana Motor Vehicle Comm'n*, 619 So. 2d 733, 1993 La. App. LEXIS 1958 (La.App. 4 Cir. 1993).

Business & Corporate Law: Distributorships & Franchises: Causes of Action: Breach of Contract

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Finding in favor of the purchaser in a breach of contract and fraud action was proper where the Louisiana Motor Vehicle Commission's findings were not in excess of the authority given to it pursuant to La. Rev. Stat. Ann. § 32:1254(N)(6)(c). *Volvo Trucks N. Am., Inc. v. State*, La. App. 04-302, 886 So. 2d 556, 2004 La. App. LEXIS 2374 (La.App. 5 Cir. 2004), writ denied, La. 2005-0004, 896 So. 2d 73, 2005 La. LEXIS 675 (La. 2005), writ denied, La. 2005-0003, 896 So. 2d 73, 2005 La. LEXIS 674 (La. 2005).

Evidence: Demonstrative Evidence: General Overview

Where the dealership from which a buyer purchased a vehicle was unable to obtain financing for the buyer through the dealership's primary lender, and sought to recover the vehicle pursuant to La. Rev. Stat. Ann. § 32:1254(N)(3)(f), the trial judge improperly ordered the buyer to surrender possession of the vehicle to the dealership; there was no proper foundation for the judgment where the trial judge reviewed documents attached to the rule to show cause that were not introduced as evidence in accordance with La. Rev. Stat. Ann. § 13:3723. *Ray Brandt Nissan, Inc. v. Gurvich*, La. App. 98-634, 726 So. 2d 474, 1999 La. App. LEXIS 133 (La.App. 5 Cir. 1999).

Governments: State & Territorial Governments: General Overview

Louisiana Motor Vehicle Commission had jurisdiction over the advertiser because the advertiser contracted with dealerships to conduct and/or assist in the sales of automobiles on certain dates, the advertiser's contracts with the dealerships included providing and mailing advertising flyers and providing personnel to assist in the sales, and due to the advertiser's actions, it was treated as a licensee pursuant to La. Rev. Stat. Ann. § 32:1252(18) and was therefore subject to all penalties, including fines as provided in La. Rev. Stat. Ann. § 32:1260 as though it were a properly licensee. *Sales 360, L.L.C. v. La. Motor Vehicle Comm'n*, 976 So. 2d 188, 2007 La. App. LEXIS 2237 (La.App. 5 Cir. 2007).

Governments: State & Territorial Governments: Licenses

Denial of the applicant's motor vehicle salesman license was affirmed because the case illustrated violations by the applicant of the rules and regulations set out in La. Rev. Stat. Ann. § 32:1251 et seq., when his former corporation encountered financial difficulty, which included non-payment of state taxes, company checks returned due to insufficient funds, stop payment orders on company checks and failure to timely pay amounts due to creditors, and which resulted by the end of a three year period in the corporation's indebtedness of over \$ 700,000. *Goodlow v. La. Motor Vehicle Comm'n*, La. App. 2002-627, 836 So. 2d 297, 2002 La. App. LEXIS 3847 (La.App. 5 Cir. 2002).

Producer had to be licensed as a recreational products manufacturer and dealer because the producer (1) described itself as a manufacturer, and (2) offered to sell such products. *Elio Motors, Inc. v. La. Motor Vehicle Comm'n*, 268 So. 3d 1132, 2019 La. App. LEXIS 526 (La.App. 5 Cir.), writ denied, 274 So. 3d 572, 2019 La. LEXIS 1669 (La. 2019).

Producer had to be licensed as a recreational products manufacturer and dealer because the producer (1) described itself as a manufacturer, and (2) offered to sell such products. *Elio Motors, Inc. v. La. Motor Vehicle Comm'n*, 268 So. 3d 1132, 2019 La. App. LEXIS 526 (La.App. 5 Cir.), writ denied, 274 So. 3d 572, 2019 La. LEXIS 1669 (La. 2019).

Torts: Business Torts: Fraud & Misrepresentation: Negligent Misrepresentation: General Overview

Under La. Rev. Stat. Ann. § 32:1254 an automobile dealer was liable for damages incurred by a purchaser when the dealer represented a demonstrator vehicle as new. *Albert Switzer & Associates, Inc. v. Dixie Buick, Inc.*, 265 So. 2d 313, 1972 La. App. LEXIS 5807 (La.App. 4 Cir. 1972).

Opinion Notes

ADMINISTRATIVE LAW & DECISIONS

Attorney General. —

Concerns demonstrator vehicles and their status as new or used vehicles., OPINION NUMBER 85-232, ; 1985 La. AG LEXIS 360.

It is unlawful for any unlicensed person, firm, association, corporation or trust to sell, solicit and advertise the sale of new and unused motor vehicles as such., OPINION No. 87-302, ; 1987 La. AG LEXIS 478.

Discussion regarding licensing requirements for vehicle lessors., OPINION NUMBER 95-438, ; 1995 La. AG LEXIS 336.

The Louisiana Motor Vehicle Commission may grant a dealer's motor vehicle dealer's license to an entity which has an established place of business outside the state of Louisiana., Opinion Number 01-85, ; 2001 La. AG LEXIS 215.

In purchasing school buses, School Board may only contract with a dealer who is licensed pursuant to Louisiana law., Opinion Number 01-145, ; 2001 La. AG LEXIS 223. .

It is therefore our opinion that a used motor vehicle dealer that is a limited liability company cannot be a subsidiary corporation so as to fall within the scope of Chapter 6 and therefore must be licensed by the LUMVPC. Opinion No. 04-0253. 2004 La. AG LEXIS 218.

Research References & Practice Aids

CROSS REFERENCES

Louisiana Law. —

Declaration of public policy, see La. R.S. 32:1251.

Regional recreational products shows, see La. R.S. 32:1256.1.

National recreational product shows, see La. R.S. 32:1256.2.

Denial, revocation, grounds, imposition of a civil penalty, or suspension of license; grounds; expiration, see La. R.S. 32:1258.

Prohibition of bids from or contracts with unlicensed dealers, see La. R.S. 38:2212.8.

Prohibition of bids from or contracts with unlicensed dealers, see La. R.S. 39:2182.

Exceptions, see La. R.S. 44:4.1.

Public license tag agents; auto title companies; rules and regulations; surety bonds; fees, see La. R.S. 47:532.1.

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LexisNexis® Louisiana Annotated Statutes > Louisiana Revised Statutes > Title 32. Motor vehicles and traffic regulation (Chs. 1 — 18) > Chapter 6. Distribution and Sale of Motor Vehicles (Pts. 1 — 5) > Part 1. General Provisions Applicable to Motor Vehicles and Recreational Products (§§ 32:1251 — 32:1269)

§ 32:1257. Establishment of new motor vehicle dealerships or relocations; protests; procedure.

A.

- (1)** Whenever the commission receives an application for a motor vehicle dealer's license which would add a new motor vehicle dealership or authorize an existing motor vehicle dealership to deal in a new or additional make of motor vehicle which would establish an additional franchise in that area, or which would authorize an existing motor vehicle dealership to deal in additional makes, models, or classifications of motor vehicles designated in the franchise or any addendum thereto, it shall first notify the existing licensed motor vehicle dealership or dealerships selling the same line makes, models, or classifications within the community or territory in which the applicant proposes to conduct business. Any same line makes, models, or classifications dealership whose assigned community or territory includes the location of the proposed new motor vehicle dealership may object to the granting of the license.
- (2)** The reopening or replacement of a dealership in a location where the same line makes, models, or classifications has been sold by a licensed motor vehicle dealer within the previous two years shall not be considered an additional motor vehicle dealer under Paragraph (1) of this Subsection.

B.

- (1)** Whenever the commission receives an application for a motor vehicle dealer's license which would relocate an existing motor vehicle dealership, including the transfer of a franchise and relocation to an existing motor vehicle dealership, it shall first notify the existing licensed motor vehicle dealership or dealerships selling the same line makes, models, or classifications within the community or territory in which the applicant proposes to conduct business. The existing same line makes, models, or classifications dealership or dealerships shall have the right to object to the granting of the license only if the proposed relocation is within a radius of five miles of its facility. However, without regard to distance, whenever the commission receives an application for the relocation of a motor vehicle dealership which would add an additional franchise to an existing same line makes, models, or classifications in dealership's community or territory, the affected dealership shall have the right to object.
- (2)** Whenever the commission receives a protest pursuant to the provisions of Paragraph (1) of this Subsection, the applicant and the manufacturer or distributor shall show, by a preponderance of the evidence, that the existing same line makes, models, or classifications motor vehicle dealership or dealerships will not be substantially harmed by locating the dealership within the five-mile area. Notwithstanding the provisions of R.S. 32:1251 to the contrary, the commission shall consider the financial impact on both the applicant and the existing dealership or dealerships.

- C.** The objection shall be in writing, and shall be received by the commission within a fifteen-day period after receipt of the notice. The fifteen-day objection period shall be waived upon written notification to the commission from all licensees, who are entitled to object, that the licensees have no objections to the

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proposed change or addition for which the notice of intent was issued. If timely objection is lodged, and prior to the issuance of the license, the commission shall hold a hearing within thirty days after receipt of the objection, or forty-five days after the request is made for the three-member panel, and issue its decision within ninety days after date of the hearing. Notice of hearing, and an opportunity to participate therein, shall be given to the manufacturer or distributor, to the applicant for the license as a motor vehicle dealer, and to the protesting dealership or dealerships. The absence of a timely protest shall not prevent the commission from considering the effect of the issuance of a license on other motor vehicle dealerships, located either within or outside the community or territory as part of its determination of whether or not the license sought should be issued.

D.

(1) Whenever the commission receives a protest pursuant to the provisions of this Section, the commission shall consider the following in determining whether there is good cause to issue a license:

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

(b) Notwithstanding the provisions of R.S. 32:1251 to the contrary, the financial impact on both the applicant and the existing dealership or dealerships.

(c) Whether the existing motor vehicle dealerships of the same line makes, models, or classifications in the dealership's community or territory are providing adequate representation and convenient consumer care for the motor vehicles of the same line makes, models, or classifications located within that area.

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

(2) The applicant and manufacturer or distributor shall have the burden of proof in demonstrating good cause by a preponderance of the evidence.

History

Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2015, No. 435, § 1, effective August 1, 2015.

Annotations

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Notes

Amendment Notes

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, rewrote the section. Former R.S. 32:1257 was redesignated as present R.S. 32:1268.

The 2015 amendment by Act No. 435, in (C), substituted “manufacturer” for “motor vehicle dealer” in the next to last sentence and deleted “on other motor vehicle dealerships located either within or” following “of a license”; substituted “manufacturer” for “motor vehicle dealer” in (D)(2).

Quoted Statutory Material. —

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Case Notes

Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue**Transportation Law: Private Vehicles: Vehicle Registration: General Overview****Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue**

Because a credibility determination was necessary to resolve the conflicting characterizations of the dealer’s intent in misrepresenting the character of its transaction with the import dealer to the manufacturer, the manufacturer’s motion for summary judgment was denied and the state motor vehicle commission was to determine whether or not the manufacturer was required to repurchase the vehicles and parts, pursuant to its powers under La. Rev. Stat. Ann. § 32:1257. *Am. Honda Motor Co. v. Premier Quality Imps., LLC*, 2005 U.S. Dist. LEXIS 17738 (E.D. La. Aug. 10, 2005), amended, 2005 U.S. Dist. LEXIS 36463 (E.D. La. Nov. 4, 2005).

Transportation Law: Private Vehicles: Vehicle Registration: General Overview

Because a credibility determination was necessary to resolve the conflicting characterizations of the dealer’s intent in misrepresenting the character of its transaction with the import dealer to the manufacturer, the manufacturer’s motion for summary judgment was denied and the state motor vehicle commission was to determine whether or not the manufacturer was required to repurchase the vehicles and parts, pursuant to its powers under La. Rev. Stat. Ann. § 32:1257. *Am. Honda Motor Co. v. Premier Quality Imps., LLC*, 2005 U.S. Dist. LEXIS 17738 (E.D. La. Aug. 10, 2005), amended, 2005 U.S. Dist. LEXIS 36463 (E.D. La. Nov. 4, 2005).

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La. R.S. § 32:1259

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§ 32:1259. Injunctions; cease and desist orders.

A. The commission is hereby authorized without posting of cost, bond, or deposit to institute an injunctive action in the district court for the parish in which the commission office is located or the district court for the parish in which the alleged offender is domiciled to enforce the provisions of this Chapter and any other law, rule, or regulation relating to the business for which a license is granted under this Chapter.

B.

(1) If it appears to the commission at any time that a person is violating the provisions of this Chapter or any rule or order of the commission issued pursuant to this Chapter, it shall notify the person engaged in such conduct to appear and show cause why a cease and desist order should not be issued prohibiting the proscribed conduct. An interlocutory cease and desist order may be granted with or without bond or other undertaking if one of the following occurs:

(a) Such an order is necessary to the performance of the duties delegated to the commission by this Chapter or is otherwise necessary or convenient to maintaining the status quo between two or more adverse parties before the commission.

(b) A party before the commission is entitled to relief demanded of the commission and all or part of the relief requires the restraint of some act prejudicial to the party.

(c) A person is performing or is about to perform or is procuring or allowing the performance of an act relating to the subject of a contested case pending before the commission, in violation of the rights of a party before the commission, and the act would tend to render the commission's order in that case ineffectual.

(d) Substantial injury to the rights of a person subject to the commission's jurisdiction is threatened irrespective of any remedy at law.

(2) Interlocutory cease and desist orders shall remain in effect until vacated or until incorporated into a final commission order. Permanent cease and desist orders may issue without regard to the enumerations in Paragraph (1) of this Subsection, but only in accordance with the provisions of this Chapter pertaining to the issuance of final commission orders. Appeal of any interlocutory cease and desist order shall be made to the commission prior to seeking judicial review under the provisions of this Chapter. Appeal of a permanent cease and desist order shall be conducted pursuant to the provisions of this Chapter pertaining to judicial review of final orders.

History

Acts 2005, No. 500, § 1, eff. July 12, 2005.

Annotations

Notes

Amendment Notes

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, along with new language, present R.S. 32:1259 is comprised of former R.S. 32:1256 (F)-(I). The former version of R.S. 32:1259 was deleted.

Quoted Statutory Material. —

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

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End of Document

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§ 32:1260. Penalties; other relief.

A.

- (1)** No civil penalty imposed for the violation of the provisions of this Chapter or the rules and regulations of the commission shall exceed five thousand dollars for each day such violation continues.
- (2)** On a second or subsequent violation, no civil penalty imposed shall exceed ten thousand dollars for each day such second or subsequent violation continues.
- (3)** In order to constitute a second or subsequent violation there must occur a lapse of at least one day following the first or previous violation.
- (4)** Any civil penalty imposed by the commission may, in the discretion of the commission, be suspended in whole or in part.
- (5)** No civil penalty imposed for the negligent filing or the untimely updating of information as required under the provisions of this Chapter or under the rules and regulations of the commission shall exceed one hundred dollars per day.

B.

- (1)** In addition to the penalties provided under this Chapter, the commission is expressly empowered and authorized to order the renewal or reinstatement, as the case may be, of any franchise of a licensee which, after following the procedures under this Chapter, is found by the commission to have been unfairly cancelled or not renewed due to lack of just provocation or cause.
- (2)** The commission's authority to order a renewal or reinstatement, as the case may be, shall be consistent with the terms of the unfairly canceled franchise agreement.
- (3)** The commission shall order the renewal for an additional full franchise term or reinstatement for the remaining term of the franchise, as the case may be, under the franchise agreement.
- (4)** In addition to the penalties provided under this Chapter, the commission is expressly empowered and authorized, after following the procedures of this Chapter, to order the issuance of a franchise to a qualified transferee, whose application for transfer, sale, or exchange has been unreasonably withheld by a manufacturer, distributor, or converter and who meets the criteria generally applied by the manufacturer in approving new motor vehicle or specialty vehicle dealers and who agrees to be bound by all the terms and conditions of the standard franchise.

C. The commission may render judgment for costs, or any part thereof, against any party to proceedings held or court reporter fees, commission attorney fees, the mileage and per diem of the commissioners, and other applicable and reasonable costs.

D. If the commission finds that it is necessary and appropriate for the protection of prospective motor vehicle or specialty vehicle dealers, because a distributor has failed to demonstrate that adequate arrangements have been made to fulfill the distributor obligations under the franchise to provide motor

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vehicles, equipment, signage, or other items included in the franchise, the commission may by order require the escrow of all fees, deposits, and other funds paid by the motor vehicle or specialty vehicle dealer until such obligations have been satisfied.

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

F. Upon the failure of any person to comply with any order of the commission issued as a result of a violation of this Chapter, or a rule or regulation adopted by the commission, the commission is authorized to file civil proceedings to enforce its order in the Twenty-Fourth Judicial District Court for the parish of Jefferson by rule to show cause conducted pursuant to the relevant provisions of the Louisiana Code of Civil Procedure. The commission shall be entitled to recover from such party all costs of the proceeding, including but not limited to court costs, discovery costs, and reasonable attorney fees incurred by the commission in enforcing its order.

History

Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2010, No. 1036, § 1, eff. Aug. 15, 2010.

Annotations

LexisNexis® Notes

Notes

Editor's Notes. —

Acts 2005, No. 500, § 1, the former R.S. 32:1260 was redesignated as present R.S. 32:1264.

Amendment Notes

2010 Amendments. —

2003 Amendments. —

2010 Amendments. —

The 2010 amendment by No. 1036 substituted “commission attorney fees” for “commission, attorney fees” in (C); and added (E) and (F).

2003 Amendments. —

Acts 2003, No. 647, § 1, effective August 15, 2003, redesignated former section as (A); added (B).

Quoted Statutory Material. —

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Case Notes

Governments: State & Territorial Governments: General Overview

Governments: State & Territorial Governments: Licenses

Governments: State & Territorial Governments: General Overview

Louisiana Motor Vehicle Commission had jurisdiction over the advertiser because the advertiser contracted with dealerships to conduct and/or assist in the sales of automobiles on certain dates, the advertiser's contracts with the dealerships included providing and mailing advertising flyers and providing personnel to assist in the sales, and due to the advertiser's actions, it was treated as a licensee pursuant to La. Rev. Stat. Ann. § 32:1252(18) and was therefore subject to all penalties, including fines as provided in La. Rev. Stat. Ann. § 32:1260 as though it were a properly licensee. *Sales 360, L.L.C. v. La. Motor Vehicle Comm'n*, 976 So. 2d 188, 2007 La. App. LEXIS 2237 (La.App. 5 Cir. 2007).

Governments: State & Territorial Governments: Licenses

Penalties and fines imposed by the Louisiana Motor Vehicle Commission on an unlicensed producer of recreational products were proper because the producer (1) committed statutory violations over a long period of time, and (2) did not deposit reservation payments for the producer's product in a trust fund, as promised. *Elio Motors, Inc. v. La. Motor Vehicle Comm'n*, 268 So. 3d 1132, 2019 La. App. LEXIS 526 (La.App. 5 Cir.), writ denied, 274 So. 3d 572, 2019 La. LEXIS 1669 (La. 2019).

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§ 32:1261. Unauthorized acts

A. It shall be a violation of this Chapter:

(1) For a manufacturer, a distributor, a wholesaler, distributor branch, factory branch, converter 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 product, motor vehicle or 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 vehicle with special features, appliances, accessories, or equipment not included in the list price of said vehicles as publicly advertised.

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

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

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

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

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

(viii) To adhere to performance standards that are not applied uniformly to other similarly situated motor vehicle dealers or specialty dealers. Any such performance standards shall be fair, reasonable, equitable, and based on accurate information. If dealership performance standards are based on a survey, the manufacturer, converter, distributor, wholesaler, distributor branch, or factory branch shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer or specialty vehicle dealer of the same line make covered by the survey request. Each response to a survey used by a manufacturer in

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preparing an evaluation or performance-rating of a motor vehicle dealer shall be made available to that motor vehicle dealer, or it cannot be used by the manufacturer. However, if a customer requests that the manufacturer or distributor not disclose the consumer's identity to the dealer, the manufacturer may withhold the consumer's identity in providing the survey response to the dealer, and the manufacturer may use the response. Any survey used must have the following characteristics:

- (aa)** It was designed by experts.
- (bb)** The proper universe was examined.
- (cc)** A representative sample was chosen.
- (dd)** The data was accurately reported.

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

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

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

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

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

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

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

(g) To delay, refuse, or fail to deliver motor vehicles in reasonable quantities relative to the licensee's facilities and sales potential in the relevant market area. This Subparagraph shall not be

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valid, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, or other such party.

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

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

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

(k)

(i) To sell or offer to sell a new or unused motor vehicle directly to a consumer except when any one of the following conditions is met:

(aa) Operating an existing, licensed, and franchised motor vehicle dealership for a reasonable period, not to exceed two years.

(bb) Operating an existing, licensed, and franchised motor vehicle dealership which is for sale to any qualified independent person at a fair and reasonable price, not to exceed two years.

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

(ii) After any of the conditions have been met under Subitems (aa) and (bb) of Item (i) of this Subparagraph, the commission may allow the manufacturer to continue operating an existing, licensed, and franchised motor vehicle dealership for longer than two years when, in the discretion of the commission, the best interest of the manufacturer, consuming public, and licensees are best served.

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

(m) To fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the terms of compensation. The commission shall find the compensation to be reasonable or the manufacturer shall remedy any deficiencies.

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

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

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

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

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

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

(t)

(i) To operate a satellite warranty and repair center, to authorize a person to perform warranty repairs, including emergency repairs, who is not a motor vehicle dealer, fleet owner, or an emergency services company or emergency services related company, or to authorize a motor vehicle dealer to operate a satellite warranty and repair center within the community or territory of a same-line or make motor vehicle dealer. This Subparagraph shall not apply to recreational product manufacturers. For the purposes of this Subparagraph, "fleet owner" means a person, including a governmental entity, who is approved and authorized by a manufacturer to perform warranty repairs and owns or leases vehicles for its own use or a renting or leasing company that rents, maintains, or leases vehicles to a third party. For the purposes of this Subparagraph, "emergency services company or emergency services related company" means a person who operates any vehicle designated and authorized to respond to an emergency. An emergency vehicle includes but is not limited to police and security vehicles, fire and rescue vehicles, medical vehicles, and civil emergency vehicles, including public utility crews dealing with gas, electricity, or water, or the repair of defective equipment on a scene.

(ii) The manufacturer may authorize a fleet owner to perform warranty repairs if the manufacturer determines that the fleet owner has the same basic level of requirements for special tools, technician certification, and training that are required of a franchise dealer but only those as determined by the manufacturer, in its sole discretion, that are necessary to perform the specified limited type of warranty repairs on the makes and models of motor vehicles for which the fleet owner is authorized to perform warranty repairs.

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- (iii)** A manufacturer who authorizes a fleet owner to perform warranty repairs shall give notification of the authorization to the dealer located in the same area of responsibility where the fleet owner intends to perform the authorized warranty repairs.
- (iv)** The provisions of Items (ii) and (iii) of this Subparagraph shall not apply to manufacturers who authorize fleet owners whose commercial vehicles are used for the movement of property, freight, or goods in intrastate or interstate commerce.
- (v)** The commission has no authority over a fleet owner or an emergency services company or emergency services related company with respect to the requirements of this Subparagraph.
- (vi)** A repair facility of a fleet owner authorized pursuant to this Subparagraph to perform warranty repairs shall not be deemed a satellite warranty and repair center as defined in R.S. 32:1252 and shall not be required to be licensed by the commission pursuant to R.S. 32:1254.
- (u)** To make a change in the area of responsibility described in the franchise agreement or sales and service agreement of a dealer, without the franchisor, converter, or manufacturer giving said dealer and the commission no less than sixty days prior written notice by certified or registered mail.
- (v)** To attempt to induce or coerce, or to induce or coerce, any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or factory branch or representative thereof, or to do any other act unfair to said dealer.
- (w)**
- (i)** To coerce or attempt to coerce any retail motor vehicle dealer or prospective retail motor vehicle dealer to offer to sell or sell any extended service contract or extended maintenance plan or gap product offered, sold, backed by, or sponsored by the manufacturer or distributor or affiliate or sell, assign, or transfer any retail installment sales contract or lease obtained by the dealer in connection with the sale or lease by him of motor vehicles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified persons by any of the following:
- (aa)** By any statement, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is express or implied or made directly or indirectly.
- (bb)** By any act that will benefit or injure the dealer.
- (cc)** By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling the motor vehicle on the condition that the dealer shall offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or that the dealer sell, assign, or transfer his retail installment sales contract on or lease of the vehicle, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified person.
- (dd)** Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition.
- (ii)** Nothing contained in this Subparagraph shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail motor vehicle dealer or prospective retail motor vehicle dealer who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any retail installment sale or lease by him of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company.

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- (x)** To charge back, deny vehicle allocation, withhold payments, or take any other adverse actions against a motor vehicle dealer because of a sale of a new motor vehicle that is exported from the United States, unless it is shown that the dealer knew or reasonably should have known on the date of the sale that the new motor vehicle was to be exported. A motor vehicle dealer shall be rebuttably presumed to have no knowledge of the export if the motor vehicle is sold by the dealer to a resident of the United States who titles and registers the motor vehicle in any state within the United States.
- (y)** To disqualify a manufacturer's sales or service satisfaction survey that pertains to a dealership employee's personal motor vehicle or specialty vehicle solely because it was mailed or communicated electronically from a dealership.
- (2)** For a motor vehicle dealer, specialty vehicle dealer, recreational product dealer, used motor vehicle dealer, or a motor vehicle salesman:
- (a)** To require a purchaser of a vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; however, this prohibition shall not apply as to special features, appliances, accessories, or equipment which are permanently affixed to the vehicle.
- (b)** To represent and sell as a new vehicle any vehicle, the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (c)** To resort to or use any false or misleading advertisement in connection with his business as such vehicle dealer or motor vehicle salesman.
- (d)** To sell or offer to sell makes, models, or classifications of new vehicles for which no franchise and license to sell is held.
- (e)** Except as otherwise approved by the commission, to sell or offer to sell a vehicle from an unlicensed location.
- (f)** To deliver to a prospective purchaser a new or a used vehicle on a sale conditioned on financing, i.e., a spot delivery, except on the following terms and conditions which shall be in writing and shall be a part of the conditional sales contract or other written notification signed by the purchaser:
- (i)** That if the sale is not concluded by the financing of the sale to the purchaser within twenty-five days of the delivery, the sale contract shall be null and void.
- (ii)** That the vehicle being offered for trade-in by the purchaser shall not be sold by the dealer until the conditional sale is complete.
- (iii)** That there shall be no charge to the purchaser should the conditional sale not be completed, including but not limited to mileage charges or charges to refurbish the vehicle offered for trade-in. However, the purchaser shall be responsible for any and all damages to the vehicle or other vehicles damaged by the fault of the purchaser and any and all liability incurred by the purchaser during the purchaser's custody of the vehicle to the extent provided for in R.S. 22:1296.
- (iv)** That if the conditional sale is not completed, the dealer shall immediately refund to the purchaser upon return of the vehicle all sums placed with the dealership as a deposit or any other purpose associated with the attempted sale of the vehicle.
- (v)** That the prospective purchaser shall return the vehicle to the dealership within forty-eight hours of notification by the dealer that the conditional sale will not be completed. If the prospective purchaser does not return the vehicle to the dealership within forty-eight hours of notification by the dealer, an authorized agent of the dealer shall have the right to recover the vehicle without the necessity of judicial process, provided that such recovery can be

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

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

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

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

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

(k)

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

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

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

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

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

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

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

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

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

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

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

(4) For a lease facilitator:

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

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

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

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

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

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

(5) For a broker:

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

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

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

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

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

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

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

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- (ii) The selling dealer. The completed copy shall be provided prior to the selling dealer's entering into a purchase agreement with the consumer at the time of delivery.
- (g) To accept a purchase deposit from any consumer that exceeds two point five percent of the selling price of the vehicle described in the brokering agreement.
- (h) To fail to refund any purchase money, including purchase deposits, upon demand by a consumer at any time prior to the consumer's signing a vehicle purchase agreement with a selling dealer of the vehicle described in the brokering agreement.
- (i) To fail to cancel a brokering agreement and refund, upon demand, any money paid by a consumer, including any brokerage fee, under any of the following circumstances:
 - (i) When the final price of the brokered vehicle exceeds the purchase price listed in the brokering agreement.
 - (ii) When the vehicle delivered is not as described in the brokering agreement.
 - (iii) When the brokering agreement expires prior to the customer's being presented with a purchase agreement from a selling dealer arranged through the brokering dealer that contains a purchase price at or below the price listed in the brokering agreement.
- (j) To act as a seller and provide brokering services, both in the same transaction.
- (k) To fail to disclose to the consumer the dollar amount of any fee that the consumer is obligated to pay to the broker. This arrangement shall be confirmed in a brokering agreement.
- (l) To fail to maintain, for a minimum of three years, a copy of the executed brokering agreement and other notices and documents related to each brokered transaction.
- (m) To fail to advise the consumer, prior to accepting any money, that a full refund will be given if the motor vehicle ordered through the broker is not obtained for the consumer.
- (6) For any person or other licensee:
 - (a) To modify a franchise during the term of the agreement or upon its renewal if the modification substantially and adversely affects the franchisee's rights, obligations, investment, or return on investment without giving sixty days written notice of the proposed modification to the licensee and the commission which includes the grounds upon which the modification is based, unless the modification is required by law, court order, or the commission. Within the sixty day notice period the licensee may file with the commission a complaint for a determination whether there is good cause for permitting the proposed modification. The party seeking to modify or replace an agreement shall demonstrate by a preponderance of the evidence that there is good cause for the modification or replacement. The commission shall schedule a hearing within sixty days to decide the matter. Multiple complaints pertaining to the same proposed modifications shall be consolidated for hearing. The proposed modification may not take effect pending the determination of the matter.
 - (b) In making a determination of whether there is good cause for permitting a proposed modification, the commission may consider any relevant factor including:
 - (i) The reasons for the proposed modification.
 - (ii) Whether the proposed modification is applied to or affects all licensees in a nondiscriminating manner.
 - (iii) The degree to which the proposed modification will have a substantial and adverse effect upon the licensee's investment or return on investment.
 - (iv) Whether the proposed modification is in the public interest.
 - (v) The degree to which the proposed modification is necessary to the orderly and profitable distribution of vehicles and other services by the licensee.

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

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

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

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

History

Acts 1999, No. 1084, § 1, eff. Aug. 15, 1999; Acts 2005, No. 121, § 1, eff. Aug. 15, 2005; Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2007, No. 27, § 1, eff. June 27, 2007; Acts 2007, No. 170, § 1, eff. June 27, 2007; Acts 2008, No. 415, § 2, eff. Jan. 1, 2009; Acts 2008, No. 483, § 1, eff. Aug. 15, 2008; Acts 2009, No. 403, § 1, eff. July 7, 2009; Acts 2010, No. 1036, § 1, eff. Aug. 15, 2010; Acts 2011, No. 89, § 1, eff. Aug. 15, 2011; Acts 2012, No. 150, § 1, eff. Aug. 1, 2012; Acts 2012, No. 326, § 1, eff. Aug. 1, 2012; Acts 2013, No. 61, § 1, eff. Aug. 1, 2013; Acts 2014, No. 770, § 1, effective August 1, 2014; Acts 2015, No. 170, § 1, effective August 1, 2015; Acts 2015, No. 435, § 1, effective August 1, 2015; Acts 2016, No. 530, § 1, effective August 1, 2016; Acts 2017, No. 45, § 1, effective June 3, 2017.

Annotations

Notes

Editor's Notes. —

Acts 2005, No. 500, conflicts with Acts 2005, No. 121. Act No. 121 proposed to amend R.S. 32:1254(N)(3)(k)(i)(bb). However, Act No. 500 redesignated that section as R.S. 32:1261(2)(k)(ii). The redesignation by Act No. 500 did not include the changes proposed in Act No. 121. Therefore, the Louisiana State Law Institute incorporated the changes from Act 121 (substituted “percentage points” for “percent”) in the section now redesignated as R.S. 32:1261(2)(k)(ii).

Amendment Notes

2017 Amendments. —

The 2017 amendment rewrote the introductory language of (A)(1)(k)(i), which formerly read: “To sell or offer to sell a new or unused motor vehicle directly to a consumer except as provided in this Chapter, or to compete with a licensee in the same-line makes, models, or classifications operating under an agreement or franchise from the aforementioned manufacturer. A manufacturer shall not, however, be deemed to be competing when any one of the following conditions are met”; rewrote (A)(1)(k)(i)(aa), which formerly read: “Operating a dealership temporarily for a reasonable period, not to exceed two years”; substituted “an existing, licensed, and franchised motor vehicle” for “a bona fide retail” in (A)(1)(k)(i)(bb); and substituted “may allow the manufacturer to continue operating an existing, licensed, and franchised motor vehicle dealership” for “shall allow the manufacturer to compete with licensees of the same-line makes, models, or classifications under an agreement or franchise from said manufacturer” in (A)(1)(k)(ii).

2016 Amendments. —

The 2016 amendment by Act No. 530 deleted “or recreational product” following “unused motor vehicle” in the first sentence of the introductory language of (A)(1)(k)(i).

2015 Amendments. —

The 2015 amendment by Act No. 170, rewrote (A)(1)(t), which formerly read: “To operate a satellite warranty and repair center, to authorize a person to perform warranty repairs who is not a motor vehicle dealer, or to authorize a motor vehicle dealer to operate a satellite warranty and repair center within the community or territory of a same-line or make motor vehicle dealer. This Subparagraph shall not apply to recreational product manufacturers.”

2014 Amendments. —

The 2014 amendment by Act No 770 deleted “that shall be filed with the commission on or before October first of each year” at the end of the first sentence of (A)(1)(m).

LSLI 2013 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute redesignated the former version of subdivision (A)(1)(x) as (A)(1)(y) as added to R.S. 32:1261 by Acts 2013, No. 61 and redesignated former subdivision (A)(1)(a)(xi) as (A)(1)(x).

2013 Amendments. —

The 2013 amendment by Act No. 61 added (A)(1)(x).

LSLI 2012 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute redesignated R.S. 32:1261(A)(1)(a)(xi), as amended by Acts 2012, Nos. 150 and 326, as R.S. 32:1261(A)(1)(x). In addition, the LSLI subsequently redesignated former Subparagraph (A)(1)(a)(xi) of R.S. 32:1261, as amended by Acts 2012, No. 150, as Subparagraph (A)(1)(x).

2012 Amendments. —

The 2012 amendment by Act No. 150 added (1)(x).

The 2012 amendment by Act No. 326 substituted “Subparagraph (i) of this Paragraph” for “Subparagraph (i) above” in the first sentence of (A)(1)(j); deleted the (A)(6)(a)(i) designation; deleted former (A)(6)(a)(ii); and added (B).

LSLI 2011 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute substituted “giving sixty days’ written notice” for “giving sixty-day written notice” in (6)(a)(i) and (6)(a)(ii), as amended by Acts 2011, No. 89, § 1.

2011 Amendments. —

The 2011 amendment by No. 89 added the (6)(a)(i) designation; in (6)(a)(i), added “which includes the grounds upon which the modification is based,” substituted “unless the modification is” for “unless the modifications are” and “agreement shall demonstrate” for “agreement must demonstrate”; and added (6)(a)(ii).

2010 Amendments. —

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The 2010 amendment by No. 1036 deleted “or specialty vehicle dealer” following “any licensee” in the introductory language of (1)(a); added “recreational product” or variants in (1)(a)(i), (1)(k)(i), introductory language of (2) and introductory language of (3); substituted “licensee” for “duly licensed motor vehicle dealer” or variants in (1)(b), (1)(d), (1)(e), (1)(g) through (1)(i), introductory language of (1)(k)(i), (1)(k)(ii) and (1)(n); deleted “new motor” preceding “vehicles” or variants in (1)(b), (1)(e), (1)(h), (2)(a) through (2)(g), (2)(i), (3)(a) through (3)(g), (4)(a), (4)(b), (4)(d), (5)(a), (5)(b), and (5)(d); added the last sentence of (1)(d); and made stylistic changes.

2009 Amendments. —

The 2009 amendment by No. 403 substituted “licensee” for “motor vehicle dealer” in the introductory language of (1)(a); deleted “or to require any controversy between a dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted courts of this state or the United States, if such referral would be binding upon the dealer” following “or other representative thereof” in (1)(a)(iv); in (1)(a)(v), added “release, assignment, novation, estoppel,” substituted “or to require any controversy between a dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted courts of this state or the United States, if such referral would be binding upon the dealer” for “or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law” and deleted “agreements, and waivers” following “instruments”; added the last sentence of (1)(o); substituted “or intends to or has established” for “or has established prior to May 1, 1999”; added the last sentence of (1)(t); added “and the commission” in (6)(a); and added (7).

2008 Amendments. —

Acts 2008, No. 483, § 1, effective August 15, 2008, added the last two sentences in (2)(j).

2007 Amendments. —

Acts 2007, No. 27, § 1, effective June 18, 2007, in (2)(f)(iii), inserted “and all” preceding “damages,” and substituted “or other vehicles damaged by the fault of the purchaser and any and all liability incurred by the purchaser during the purchaser’s custody” for “occurring during the purchaser’s custody.”

Acts 2007, No. 170, § 1, effective June 27, 2007, added (1)(w).

2005 Amendments. —

Acts 2005, No. 121, § 1, effective August 15, 2005, substituted “percentage points” for “percent” in R.S. 32:1254(N)(3)(k)(i)(bb). That section was redesignated by Acts 2005, No. 500, as R.S. 32:1261(2)(k)(ii).

Acts 2005, No. 500, § 1, effective July 12, 2005, along with new language, present 32:1261 contains former R.S. 32:1254 (N)(3)-(T)(2)(b). Former R.S. 32:1261 was redesignated as R.S. 32:1265.

Quoted Statutory Material. —

Acts 2009, No. 403, § 3, provides that “If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.”

Acts 2007, No. 27, § 2, provides that “This Act is interpretive and shall apply to any liability trust fund arrangement covered by the provisions of this Act which is in existence on or prior to the effective date of this Act.”

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Notes to Decisions

Commercial Law (UCC): Sales (Article 2): Remedies: General Overview**Criminal Law & Procedure: Criminal Offenses: Fraud: Fraud Against the Government: False Statements: General Overview****Evidence: Procedural Considerations: General Overview****Governments: Legislation: Effect & Operation: Prospective Operation****Torts: Business Torts: Fraud & Misrepresentation: General Overview****Commercial Law (UCC): Sales (Article 2): Remedies: General Overview**

Where the dealership from which a buyer purchased a vehicle was unable to obtain financing for the buyer through the dealership's primary lender, and sought to recover the vehicle pursuant to former La. Rev. Stat. Ann. § 32:1254(N)(3)(f) (now La. Rev. Stat. Ann. § 32:1261(2)(f)), the trial judge improperly ordered the buyer to surrender possession of the vehicle to the dealership; there was no proper foundation for the judgment where the trial judge reviewed documents attached to the rule to show cause that were not introduced as evidence in accordance with La. Rev. Stat. Ann. § 13:3723. *Ray Brandt Nissan, Inc. v. Gurvich*, La. App. 98-634, 726 So. 2d 474, 1999 La. App. LEXIS 133 (La.App. 5 Cir. 1999).

Criminal Law & Procedure: Criminal Offenses: Fraud: Fraud Against the Government: False Statements: General Overview

Where a car dealer-operator was not responsible for a newspaper error in its advertisement of an interest rate on a four-year car loan, the dealer-operator could not be fined for a violation of former La. Rev. Stat. Ann. § 32:1254(N)(3)(c) (now La. Rev. Stat. Ann. § 32:1261(2)(c)). *Billy Navarre Chevrolet, Inc. v. Executive Director, Louisiana Motor Vehicle Com.*, 571 So. 2d 223, 1990 La. App. LEXIS 2884 (La.App. 3 Cir. 1990).

Evidence: Procedural Considerations: General Overview

Where the dealership from which a buyer purchased a vehicle was unable to obtain financing for the buyer through the dealership's primary lender, and sought to recover the vehicle pursuant to former La. Rev. Stat. Ann. § 32:1254(N)(3)(f) (now La. Rev. Stat. Ann. § 32:1261(2)(f)), the trial judge improperly ordered the buyer to surrender possession of the vehicle to the dealership; there was no proper foundation for the judgment where the trial judge reviewed documents attached to the rule to show cause that were not introduced as evidence in accordance with La. Rev. Stat. Ann. § 13:3723. *Ray Brandt Nissan, Inc. v. Gurvich*, La. App. 98-634, 726 So. 2d 474, 1999 La. App. LEXIS 133 (La.App. 5 Cir. 1999).

Governments: Legislation: Effect & Operation: Prospective Operation

Former La. Rev. Stat. Ann. § 32:1254(S) (now La. Rev. Stat. Ann. § 32:1261), did not apply to a contract between a car manufacturer and a car dealer which had been entered into in 1989 because the statute had been enacted in 1993 and revised in 1999, and it was silent on retroactivity; when the legislature is silent as to the application of a substantive statute, the statute can only be applied prospectively. *Nissan N. Am., Inc. v. Royal Nissan, Inc.*, La. App. 01-113, 794 So. 2d 45, 2001 La. App. LEXIS 1341 (La.App. 5 Cir. 2001).

Torts: Business Torts: Fraud & Misrepresentation: General Overview

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Under former La. Rev. Stat. Ann. § 32:1254 (now La. Rev. Stat. Ann. § 32:1261) an automobile dealer was liable for damages incurred by a purchaser when the dealer represented a demonstrator vehicle as new. *Albert Switzer & Associates, Inc. v. Dixie Buick, Inc.*, 265 So. 2d 313, 1972 La. App. LEXIS 5807 (La.App. 4 Cir. 1972).

Research References & Practice Aids

CROSS REFERENCES

Louisiana Law. —

Succession; right of first refusal, see La. R.S. 32:1267.

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La. R.S. § 32:1261.1

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§ 32:1261.1. Indemnification of franchised dealers.

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

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

History

Acts 2009, No. 403, § 1, eff. July 7, 2009; Acts 2010, No. 1036, § 1, eff. Aug. 15, 2010; Acts 2012, No. 326, § 1, eff. Aug. 1, 2012.

Annotations

Notes

Amendment Notes

2012 Amendments. —

2010 Amendments. —

2012 Amendments. —

The 2012 amendment by Act No. 326 added (B).

2010 Amendments. —

The 2010 amendment by No. 1036 added “specialty vehicle, recreational product.”

Quoted Statutory Material. —

La. R.S. § 32:1261.1

Acts 2009, No. 403, § 3, provides that "If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable."

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La. R.S. § 32:1261.2

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§ 32:1261.2. Payment to dealers; penalties.

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

History

Acts 2009, No. 403, § 1, eff. July 7, 2009.

Annotations

Notes

Quoted Statutory Material. —

Acts 2009, No. 403, § 3, provides that “If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.”

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La. R.S. § 32:1262

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§ 32:1262. Warranty; compensation; audits of dealer records

A.

(1) For the purpose of this Section, the following terms have the meanings ascribed to them:

(a) “Manufacturer, distributor, wholesaler, factory branch, or distributor branch’s warranty” means and includes a new motor vehicle warranty, a recall, or a certified pre-owned warranty of a manufacturer, distributor, wholesaler, factory branch, or distributor branch to repair or replace a defect in a vehicle or part.

(b) “Parts” means parts and components of a motor vehicle, including engine, transmission, other parts assemblies, and manufacturer replacement parts.

(c) “Qualifying repair” means a repair to a vehicle included within the manufacturer, distributor, wholesaler, factory branch, or distributor branch’s original new motor vehicle warranty, except that the vehicle on which the repair was performed exceeds the chronological or mileage limit of the warranty, and the repair does not otherwise constitute warranty work and does not include any of the work described in Paragraph (8) of this Subsection.

(d) “Qualifying repair order” means a repair order that encompasses, in whole or in part, a qualifying repair or repairs.

(e) “Repair order” means an invoice paid by a retail customer and closed at the time of submission, which encompasses one or more repairs to or other work on a vehicle, and reflecting, in the case of a parts mark-up submission, the cost of each part and its sale price, and in the case of a labor rate submission, the labor hours charged to each job and the sale price of such labor.

(f) “Warranty work” means work, including diagnostic labor, performed by a dealer in order to fulfill the obligations of a manufacturer, distributor, wholesaler, factory branch, or distributor branch warranty. “Warranty work” shall also include work arranged to be performed by a dealer if such work is authorized by the manufacturer, distributor, wholesaler, factory branch, or distributor branch in order to fulfill the obligations of a manufacturer, distributor, wholesaler, factory branch, or distributor branch warranty.

(2) It shall be a violation of this Chapter for a manufacturer, a distributor, a wholesaler, distributor branch, or factory branch to fail to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by such dealer to perform warranty work and the delivery and preparation obligations imposed on the dealer by a manufacturer, distributor, wholesaler, factory branch, or distributor branch.

(3) In no event shall any manufacturer, distributor, wholesaler, factory branch, or distributor branch pay a dealer for warranty work less than the rates charged by the dealer to the retail customer of the dealer for non-warranty qualifying repairs. Time allowances for the performance of warranty work shall be reasonable and adequate in relation to the nature and scope of the work for a qualified technician of ordinary skill to perform the work.

(4)

(a) Subject to the provisions of Subparagraph (b) of this Paragraph, the parts mark-up or labor rate customarily charged by the dealer may be established or modified at the election of the dealer by formally submitting in writing, to the representative or pre-designated representative of the manufacturer, distributor, wholesaler, factory branch, or distributor branch, by electronic transmission or tangible delivery, either of the following:

- (i)** All consecutive repair orders that include one hundred sequential qualifying repair orders.
- (ii)** All repair orders closed during any period of ninety consecutive days.

(b) A dealer submitting repair orders pursuant to Subparagraph (a) of this Paragraph shall submit the option that produces the fewer number of repair orders, which includes repairs made no more than one hundred eighty days before the submission.

(5) The dealer shall calculate the labor rate by determining the total charges for labor from the qualifying repairs submitted and dividing that amount by the total number of hours that produced the total charges. The dealer shall calculate the parts mark-up by determining the total charges for parts from the qualifying repairs submitted, dividing that amount by the total cost of the purchase of such parts, subtracting one from that amount, and multiplying by one hundred to produce a percentage.

(6) A dealer seeking to establish or modify the warranty labor rate or parts mark-up shall submit to the manufacturer, distributor, wholesaler, factory branch, or distributor branch either of the following:

- (a)** A single set of repair orders for the purpose of calculating both the labor rate and parts mark-up.
- (b)** A single set of repair orders for the purpose of calculating only the labor rate or parts mark-up.

(7) A dealer may not submit to establish or modify its parts mark-up, labor rate, or both, more than once in a twelve-month period.

(8) In calculating the labor rate or parts mark-up, the following shall not be included:

- (a)** Repairs subject to manufacturer, distributor, wholesaler, factory branch, or distributor branch's discounts, such as special events, special promotions, coupons, or service campaigns.
- (b)** Parts sold at wholesale.
- (c)** Repairs of vehicles owned by the dealer or an employee.
- (d)** Routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners.
- (e)** Installations of accessories.
- (f)** Replacement of or work on tires or wheels, including alignments, wheel or tire rotations, or replacements of brake drums, rotors, shoes, or pads.
- (g)** Vehicle reconditioning.
- (h)** Safety or emission inspections required by law.
- (i)** Repairs for which volume discounts have been negotiated with government agencies, insurers, or service contract providers.
- (j)** Parts that do not have individual part numbers.
- (k)** Manufacturer, distributor, wholesaler, factory branch, or distributor branch's approved and reimbursed goodwill repairs or reimbursements.
- (l)** Windshield replacements, window etchings, window tints, protective films, or other masking products.

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(m) Body shop repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third party negligence or deliberate act.

(9)

(a) The submitted parts mark-up or labor rate shall be presumed accurate, and shall go into effect forty-five days after the manufacturer, distributor, wholesaler, factory branch, or distributor branch receives the submission unless, within the forty-five-day period, the manufacturer, distributor, wholesaler, factory branch, or distributor branch rebuts the presumption.

(b) If the manufacturer, distributor, wholesaler, factory branch, or distributor branch determines from any set of qualifying repair orders submitted by the dealer that the parts mark-up, labor rate, or both, calculated in accordance with the provisions of this Subsection, is substantially higher or lower than the rate currently on record with the manufacturer, distributor, wholesaler, factory branch, or distributor branch for labor, parts, or if applicable, both, the manufacturer, distributor, wholesaler, factory branch, or distributor branch may request in writing, within forty-five days of receipt of the submitted parts mark-up or labor rate, additional repair orders for a period of either thirty days prior to or thirty days subsequent to the time for which the repair orders were submitted for purposes of establishing or modifying a rate. The manufacturer, distributor, wholesaler, factory branch, or distributor branch shall have forty-five days from receiving the additional repair orders to rebut the presumption in accordance with the provisions of this Paragraph, provided that any rebuttal utilizing the additional repair orders shall conform to the requirements of Paragraphs (4), (5), and (8) of this Subsection.

(c) The manufacturer, distributor, wholesaler, factory branch, or distributor branch may rebut the presumption by doing all of the following:

- (i)** Reasonably substantiating that the submission is materially inaccurate and by providing a full explanation of any and all reasons.
- (ii)** Producing evidence validating each reason.
- (iii)** Producing a copy of all calculations used to demonstrate any material inaccuracies.
- (iv)** Producing a proposed adjusted parts mark-up, labor rate, or if applicable, both, based upon the qualified repair orders submitted by the dealer.

(10) Subject to the provisions of Paragraph (9) of this Subsection, the manufacturer, distributor, wholesaler, factory branch, or distributor branch shall not submit more than one rebuttal to the dealer and shall not add to, expand, supplement, or otherwise modify any element, including but not limited to any grounds for contesting the parts mark-up or labor rate, except upon the discovery of relevant information that was not known or could not have been known at the time of issuing the rebuttal.

(11) If the dealer and the manufacturer, distributor, wholesaler, factory branch, or distributor branch do not agree on the parts mark-up or labor rate, the dealer may file a protest with the Louisiana Motor Vehicle Commission within sixty days of receiving the manufacturer's rejection and proposal. The commission shall notify the manufacturer, distributor, wholesaler, factory branch, or distributor branch and schedule a hearing. The manufacturer, distributor, wholesaler, factory branch, or distributor branch shall have the burden of proving by a preponderance of the evidence that the dealer's submitted parts mark-up or labor rate was materially inaccurate as described in Paragraph (9) of this Subsection. If the Louisiana Motor Vehicle Commission decides in favor of the dealer, any increase in the dealer's parts mark-up or labor rate shall be effective, retroactively, forty-five days following the manufacturer, distributor, wholesaler, factory branch, or distributor branch's receipt of the original submission.

(12) If a manufacturer, distributor, wholesaler, factory branch, or distributor branch furnishes a part to a dealer, at either no cost or a reduced cost, to use in performing warranty work, the manufacturer, distributor, wholesaler, factory branch, or distributor branch shall compensate the dealer for the part in the same manner as warranty parts compensation under this Section by compensating the dealer on

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the basis of the dealer's mark-up on the cost for the part as listed in the manufacturer, distributor, wholesaler, factory branch, or distributor branch's price schedule, minus the cost for the part.

(13) A manufacturer, distributor, wholesaler, factory branch, or distributor branch may not require a dealer to establish the parts mark-up or labor rate customarily charged by the dealer for parts or labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction calculations.

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

(15) The obligations in this Subsection as they relate to recreational products may be modified by contract.

B.

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

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

(a) The claim was false or fraudulent.

(b) The repairs were not properly made.

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

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

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

(4)

(a) A dealer shall not be charged back on a claim when a dealer performs a repair covered by the manufacturer's or distributor's warranty, and the dealer reasonably demonstrates that the repair resolved the condition which the customer presented for resolution, and the dealer documents what has been repaired and the process utilized to accomplish the repair.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to recreational products dealers.

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

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

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

(8) The dealer shall not be charged back for any rebate paid to a consumer pursuant to a manufacturer's rebate program, provided the dealer acted in good faith when relying on the consumer's qualifying information and otherwise complied with the program guidelines and documentation requirements. A manufacturer's rebate program shall include but not be limited to a rebate program that targets college graduates, military personnel, first-time buyers, owner loyalty, family relationships, and any other similar program.

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

History

Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2008, No. 233, § 1, eff. Aug. 15, 2008; Acts 2009, No. 403, § 1, eff. July 7, 2009; Acts 2010, No. 1036, § 1, eff. Aug. 15, 2010; Acts 2011, No. 89, § 1, eff. Aug. 15, 2011; Acts 2012, No. 326, § 1, eff. Aug. 1, 2012; Acts 2013, No. 61, § 1, eff. Aug. 1, 2013; Acts 2021, No. 76, § 1, effective August 1, 2021.

Annotations

Notes

Amendment Notes

LSLI 2021 Amendments. —

2021 Amendments. —

2013 Amendments. —

2012 Amendments. —

2011 Amendments. —

2010 Amendments. —

2009 Amendments. —

2008 Amendments. —

2005 Amendments. —

2004 Amendments. —**2001 Amendments. —****LSLI 2021 Amendments. —**

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute substituted “repair orders” for “repairs order” in subsection (A)(6)(b); and substituted “forty-five-day” for “forty-five day” in subsection (A)(9)(a) of La. R.S. 32:1262, as enacted by Acts 2021, No. 76.

2021 Amendments. —

The 2021 amendment rewrote the section.

2013 Amendments. —

The 2013 amendment by Act No. 61 added (B)(8).

2012 Amendments. —

The 2012 amendment by Act No. 326 added (C).

2011 Amendments. —

The 2011 amendment by No. 89 substituted “the final payment to the dealer under a promotion, event, program, or activity” for “the close of the promotion, event, program, or activity” in (B)(1); added (B)(4), (B)(6) and (B)(7); redesignated former (B)(4) as (B)(5); and made a stylistic change.

2010 Amendments. —

The 2010 amendment by No. 1036 deleted “of motor vehicles” following “manufacturer” in (A)(1); and deleted “motor vehicle” preceding “dealer’s” in (B)(3).

2009 Amendments. —

The 2009 amendment by No. 403 added (A)(5) and made a stylistic change.

2008 Amendments. —

Acts 2008, No. 233, § 1, effective August 15, 2008, added the last three sentences in (B)(1).

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, rewrote the text; along with new language, R.S. 32:1262 contains former 32:1254.1.

2004 Amendments. —

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Acts 2004, No. 250, § 1, effective August 15, 2004, added (D).

2001 Amendments. —

Acts 2001, No. 1054, § 1, effective August 15, 2001, substituted “be for the twelve-month period immediately following the date of the close of the promotion, event, program, or activity” for “be for the eighteen-month period immediately following the date of the payment of the claim by the manufacturer or distributor” in (A); substituted “not properly made, or the repairs were unnecessary” for “were not properly made or were unnecessary” in (B); substituted “requirement, or a clerical error, or other” for “requirement that results in a clerical error or other” in (C).

Quoted Statutory Material. —

Acts 2009, No. 403, § 3, provides that “If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.”

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

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§ 1264.2.32:1264.2 Recall repairs; compensation

A. As used in this Section:

- (1) “Do not drive order” means a notification issued by a manufacturer, distributor, factory branch, or distributor branch stating that certain used vehicles shall not be driven due to a federal safety recall for a defect or a noncompliance, or a federal emissions recall. Such notification shall include an unconditional instruction to the recipient not to drive the vehicle until the remedy for the recall is complete.
- (2) “Stop sale order” means a notification issued by a manufacturer, distributor, factory branch, or distributor branch to its franchised new motor vehicle dealers stating that certain used vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or a noncompliance, or a federal emissions recall.

B.

(1)

- (a) A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs. Compensation for recall repairs shall be reasonable.
- (b) If parts or a remedy are not reasonably available to perform a recall service or repair on an affected used vehicle held for sale by a dealer authorized to sell and service new vehicles of the same line-make or authorized to perform recall work on an affected vehicle within forty-five days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a stop sale order or do not drive order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least one and one-quarter percent of the value of the vehicle per month.
- (i) When a stop sale order or do not drive order has been issued and repair parts or remedy remain unavailable on an affected used vehicle, compensation shall begin forty-five days after either of the following occurrences:
- (aa) The date on which the stop sale order or do not drive order was provided to the dealer, if the affected used vehicle is in the dealer’s inventory at the time the stop sale or do not drive order was issued to the dealer.
 - (bb) The date on which the dealer takes the affected used vehicle into the dealer’s inventory as a trade-in incident to the customer’s purchase of a new vehicle.
- (ii) Compensation shall cease when one of the following events occurs:
- (aa) The date the recall remedy or parts are made available.
 - (bb) The date the stop sale order or do not drive order is withdrawn.
 - (cc) The date the dealer disposes of the affected used vehicle.

(2) For the purposes of this Section, the value of a used vehicle shall be the average trade-in value for used vehicles as indicated in an independent third-party guide for the year, make, and model of the recalled vehicle.

C.

(1) Subject to the audit provisions of R.S. 32:1262, it shall be a violation of this Section for a manufacturer to reduce the amount of compensation otherwise owed to an individual new motor vehicle dealer solely because the new motor vehicle dealer has submitted a claim for reimbursement under this Section. This prohibition shall include reduction through a chargeback, surcharge, removal of the individual dealer from an incentive program, or reduction in amount owed under an incentive program.

(2) This Subsection shall not apply to an action by a manufacturer to any prospective change, modification, cancellation, or elimination of any incentive program that is applied uniformly among all dealers of the same line-make in the state.

D. Pursuant to the provisions of this Section, all reimbursement claims made by new motor vehicle dealers for recall remedies or repairs, or for compensation where no part or repair is reasonably available and the vehicle is subject to a stop sale order or do not drive order shall be subject to the same limitations and requirements as a warranty reimbursement claim made under R.S. 32:1262. However, a manufacturer may compensate its franchised dealers under a national recall compensation program provided the compensation under the program is equal to or greater than the compensation provided in Paragraph (B)(1) of this Section or as the manufacturer and dealer otherwise agree.

E. A manufacturer may direct the manner and method in which a dealer shall demonstrate the inventory status of an affected used motor vehicle to determine eligibility under this Section, provided such manner and method may not be unduly burdensome and may not require information that is unduly burdensome to provide.

F. Nothing in this Section shall require a manufacturer to provide total compensation to a dealer that would exceed the total average trade-in value of an affected used motor vehicle as originally determined in Paragraph (B)(2) of this Section.

G. Any remedy provided to a dealer under this Section is exclusive and shall not be combined with any other state or federal recall compensation remedy or other federal law.

History

Acts 2018, No. 142, § 1, effective August 1, 2018.

Annotations

Notes

Amendment Notes

LSLI 2018 Amendments. —

In accordance with the revision authority set forth in R.S. 24:201 et seq. and Acts 2018, No. 206 § 7, the Louisiana State Law Institute reversed the order of the subsections under (A).

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§ 32:1266. Motor vehicle lessors; appointment of motor vehicle lease facilitators.

A.

(1) Except as otherwise provided by this Chapter, a motor vehicle lessor franchisor may not terminate a franchise prior to the expiration of its term, except for good cause. Good cause shall include but not be limited to the failure of the franchisee to comply with any lawful requirement of the franchise, after being given notice thereof, and a reasonable opportunity, which in no event need be more than thirty days, to cure the failure. Nothing herein shall permit the cancellation of a franchise solely for failure to meet performance standards based on a survey of sales penetration in a regional, national, territorial, or other geographic area.

(2) If during the period in which the franchise granted by a motor vehicle lessor franchisor is in effect, there occurs any of the following events, which is relevant to the franchise, immediate notice of termination without opportunity to cure shall be reasonable:

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

(b) The motor vehicle lessor franchisor and the franchisee agree in writing to terminate the franchise.

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

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

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

(3)

(a) No motor vehicle lessor franchisor shall fail to renew a franchise unless the franchisor provides the following:

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

(ii) The franchisee with an opportunity to sell his business, during the one hundred eighty days prior to the expiration of the franchise, to a purchaser meeting the franchisor's then current

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requirements for granting new franchises, or if not granting a significant number of new franchises, then the current requirements for granting renewal franchises.

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

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

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

B.

(1) A motor vehicle lessor may appoint one or more lease facilitators licensed pursuant to the terms of this Chapter to represent the motor vehicle lessor in obtaining prospective lease customers. An appointment complies with the requirements of this Subsection if it is in writing, discloses its terms, and otherwise complies with the rules of the commission.

(2) In a lease contract or agreement between a motor vehicle lessor and a lessee solicited, procured, or produced by a lease facilitator, the motor vehicle lessor shall disclose to the lessee that a fee was paid, or will be paid to the lease facilitator for the solicitation, procurement, or production of the lessee or the lease. The motor vehicle lessor shall include the disclosure required by this Paragraph in a prominent position in one or both of the following manners:

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

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

C.

(1) Except as otherwise provided by this Section, a lease facilitator may accept a fee for procuring a vehicle lessee or prospective vehicle lessee for or on behalf of a lessor.

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

(3) Nothing in this Section shall prohibit a lease facilitator from representing a lessor or lessee in the acquisition of a motor vehicle for the purpose of leasing the vehicle to another person.

History

Acts 2005, No. 500, § 1, eff. July 12, 2005.

Annotations

Notes

Amendment Notes

2005 Amendments. —

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Acts 2005, No. 500, § 1, effective July 12, 2005, enacted R.S. 32:1266, the text of which contains former R.S. 32:1254(U)-(X).

Quoted Statutory Material. —

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Research References & Practice Aids

CROSS REFERENCES**Louisiana Law. —**

Unauthorized acts, see La. R.S. 32:1261.

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§ 32:1267. Succession; right of first refusal.

A.

- (1)** The terms of the franchise notwithstanding, any dealer may appoint by will, or other written instrument, a designated successor to succeed in the ownership interest of the dealer in the dealership upon the death or incapacity of the dealer.
- (2)** Unless good cause exists for refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased or incapacitated dealer of a dealership may succeed to the ownership of the dealership under the existing franchise if:
 - (i)** The designated successor gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the dealer within sixty days of the dealer's death or incapacity.
 - (ii)** The designated successor agrees to be bound by all the terms and conditions of the franchise.
- (3)** The manufacturer or distributor may request, and the designated successor shall provide, promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.
- (4)** If a manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated dealer, the manufacturer or distributor may, not more than sixty days following receipt of notice of the designated successor's intent to succeed and receipt of such personal or financial data, serve upon the designated successor notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer not earlier than six months from the date such notice is served.
- (5)** The notice must state the specific grounds for the refusal to honor the succession.
- (6)** If notice of refusal and discontinuance is not timely served upon the designated successor, the franchise shall continue in effect subject to termination only as otherwise permitted by this Chapter.
- (7)** In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards as a franchisee.
- (8)** If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated owner for good cause, then and in such event:
 - (i)** The manufacturer or distributor shall allow the designated successor a reasonable period of time which shall not be less than six months in which to consummate a sale of the dealership. Any such sale shall be subject to R.S. 32:1261(1)(d).
 - (ii)** Upon termination of the franchise pursuant to such refusal, the provisions of R.S. 32:1268 shall apply.

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

- (1)** In order to exercise its right of first refusal, the manufacturer or distributor shall notify the motor vehicle dealer in writing within sixty days of his receipt of the completed proposal for the proposed sale or transfer and all related agreements.
- (2)** The applicability of R.S. 32:1261(1)(l) shall not be expanded or changed.
- (3)** The exercise of the right of first refusal will result in the dealer receiving the same or greater consideration as he has contracted to receive in connection with the proposed change of ownership or transfer.
- (4)** The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealers, or to a qualified manager with at least two years management experience at the dealership of one or more of these dealers, or to a partnership or corporation controlled by such persons.
- (5)**
 - (a)** The manufacturer or distributor agrees to pay the reasonable expenses, including attorney fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Such expenses and attorney fees shall be paid to the proposed new owner or transferee at the time of closing of the sale or transfer for which the manufacturer or distributor exercised its right of first refusal.
 - (b)** No payment of such expenses and attorney fees shall be required if the new owner or transferee has not submitted or caused to be submitted an accounting of those expenses within thirty days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. A manufacturer or distributor may request such accounting before exercising his right of first refusal.
- (6)** The dealer shall not have any liability to any person as a result of a manufacturer's exercising its right of first refusal and the manufacturer or distributor shall assume the defense of the selling dealer for any claim by the proposed owner or transferee arising from the exercise of the right of first refusal.

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

History

Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2012, No. 326, § 1, eff. Aug. 1, 2012.

Annotations

LexisNexis® Notes

Notes

Amendment Notes**2012 Amendments. —****2005 Amendments. —****2012 Amendments. —**

The 2012 amendment by Act No. 326 added (C).

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, inserted entirely new text into R.S. 32:1267 and redesignated former R.S. 32:1267 as R.S. 32:1268.

Quoted Statutory Material. —

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Case Notes

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers**Torts: Procedure: Multiple Defendants: Indemnity: Noncontractual Indemnity****Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers**

Franchisee was not entitled to indemnification from a franchisor under La. Rev. Stat. Ann. § 32:1267(B)(6) for litigation arising out of the franchisee’s alleged looting of its bank accounts prior to a sale to the franchisor’s assignee pursuant to a settlement agreement. Section 32:1267 was intended to protect the franchisee from litigation arising out of the franchisor’s exercise of its right of first refusal, not from litigation arising out of conversion of funds. *Kenworth of S. La., LLC v. Bristow*, 34 So. 3d 380, 2010 La. App. LEXIS 423 (La.App. 3 Cir. 2010).

Torts: Procedure: Multiple Defendants: Indemnity: Noncontractual Indemnity

Franchisee was not entitled to indemnification from a franchisor under La. Rev. Stat. Ann. § 32:1267(B)(6) for litigation arising out of the franchisee’s alleged looting of its bank accounts prior to a sale to the franchisor’s assignee pursuant to a settlement agreement. Section 32:1267 was intended to protect the franchisee from litigation arising out of the franchisor’s exercise of its right of first refusal, not from litigation arising out of conversion of funds. *Kenworth of S. La., LLC v. Bristow*, 34 So. 3d 380, 2010 La. App. LEXIS 423 (La.App. 3 Cir. 2010).

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§ 32:1268. Requirements upon termination; penalty; indemnity.

A.

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

(a) All new motor vehicles, recreational products, and specialty vehicles of the current and last prior model year delivered to the licensee and parts on hand purchased in the ordinary course of business that have not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the licensee. As to recreational products dealers, the repurchase of parts shall be limited to those listed in the manufacturer's price book. The motor vehicles, recreational products, and specialty vehicles and parts shall be repurchased at the cost to the licensee which shall include without limitation freight and advertising costs, less all allowances paid to the dealer, except that new automobiles shall be purchased on the schedule as follows:

(i) Vehicles with 0-1,000 miles at the cost to the licensee.

(ii) Vehicles with 1,001-6,000 miles at the cost to the licensee reduced by the net discount value of each mile in excess of 1,000 miles, where "net discount value" is determined according to the following formula: cost to the licensee multiplied by total mileage in excess of 1,000 miles divided by 100,000, and where "net cost" equals the dealer cost plus any charges by the manufacturer, distributor, or representative for distribution, delivery, advertising, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles.

(iii) Vehicles with 6,001 miles or over — no obligation to repurchase.

(iv) Any mileage recorded by a manufacturer in distributing a motor vehicle to a motor vehicle dealer shall not be included in the calculation as provided in this Subparagraph.

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

(c) At fair market value, all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased in the ordinary course of business from or at the request of the manufacturer, converter, distributor, or representative, if the tools and equipment are in usable and good condition except for

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reasonable wear and tear. Fair market value shall be no less than cost of acquisition of special tools and automotive service equipment by the dealer.

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

(2)

(a) After a motor vehicle dealer terminates his franchise, the manufacturer or converter shall make required repurchases within thirty days after such dealer has satisfied all of the following conditions:

(i) The motor vehicle dealer submits to the manufacturer, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, a final inventory of motor vehicles and parts, special tools, and automotive services on hand.

(ii) The motor vehicle dealer tenders the parts, special tools, and automotive service equipment to the manufacturer.

(b) After a specialty vehicle dealer terminates his franchise, the manufacturer or converter shall make required repurchases within thirty days after such dealer has submitted to the manufacturer by certified mail, return receipt requested, or commercial delivery service with verification of receipt, a final inventory of vehicles and parts on hand.

(c) After a recreational products dealer terminates his franchise, the manufacturer or converter shall make required repurchases within sixty days after such dealer has submitted to the manufacturer by certified mail, return receipt requested, or commercial delivery service with verification of receipt, a final inventory of vehicles and parts on hand. This Subparagraph shall not apply to the repurchase of marine products and related items.

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

C.

(1) Upon the involuntary termination, nonrenewal, or cancellation of any franchise by the manufacturer or converter, except for termination, nonrenewal, or cancellation resulting from a felony conviction, notwithstanding the terms of any franchise, whether entered into before or after the enactment of this Chapter or any of its provisions, the new motor vehicle or specialty vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or converter as agreed by the parties, or lacking agreement, as determined by the commission, for the dealership facilities if the facilities were required to be purchased or constructed as a precondition to obtaining the franchise or to its renewal; provided that if such facilities were leased and the lease were required as a precondition to obtaining the franchise or to its renewal, then the manufacturer or converter shall be liable for one year's payment of the rent or the remainder of the term of the lease, whichever is less.

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

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

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

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

History

Added by Acts 1985, No. 911, § 1; Amended by Acts 2005, No. 500, § 1, eff. July 12, 2005; Acts 2009, No. 403, § 1, eff. July 7, 2009; Acts 2010, No. 1036, § 1, eff. Aug. 15, 2010; Acts 2012, No. 150, § 1, eff. Aug. 1, 2012; Acts 2012, No. 326, § 1, eff. Aug. 1, 2012.

Annotations

Notes

Amendment Notes

2012 Amendments. —

2010 Amendments. —

2009 Amendments. —

2005 Amendments. —

2001 Amendments. —

1999 Amendments. —

2012 Amendments. —

The 2012 amendment by Act No. 150 inserted “purchased in the ordinary course of business” in the first sentence of (A)(1)(a); substituted “in the ordinary course of business from or” for “from or purchased” in the first sentence of (A)(1)(c); rewrote (A)(2), which formerly read: “The manufacturer or converter shall make the required repurchase after the dealer terminates his franchise and within thirty days for motor and speciality vehicle dealers and sixty days for recreational products dealers of the submission to it, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, of a final inventory of motor vehicles and parts on hand”; and made stylistic changes.”

The 2012 amendment by Act No. 326 added (D).

2010 Amendments. —

The 2010 amendment by No. 1036 added “recreational products” or variants in the introductory language of (A)(1) and (A)(1)(a), in (A)(1)(d) and (B); substituted “by certified mail” for “by registered or certified mail” in the introductory language of (A)(1) and in (A)(2); added the second sentence of (A)(1)(a); substituted “motor and specialty vehicles” for “motor vehicles” in (A)(1)(d) and (B); added “for motor and speciality vehicle dealers and sixty days for recreational products dealers” in (A)(2); and made stylistic changes.

2009 Amendments. —

The 2009 amendment by No. 403 added “or commercial delivery service with verification of receipt” in (A)(1) and (A)(2); substituted “the schedule as follows” for “the following schedule” in the introductory language of (A)(1)(a); added “miles” in (A)(1)(a)(iii); substituted “the calculation as provided in this Subparagraph” for “this calculation” in (A)(1)(a)(iv); added the second sentence of (A)(1)(b); added the second sentence of (A)(1)(c); deleted former (C);

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redesignated former (D) as (C)(1); deleted “the following” following “for” in (C)(1); added (C)(4); and made related and stylistic changes.

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, redesignated former R.S. 32:1257 as R.S. 32:1268; substituted “specialty” for “speciality” throughout the section; deleted “and unused” following “new” throughout the section; deleted (D) and redesignated former (E) as present (D).

2001 Amendments. —

Acts 2001, No. 1067, § 1, effective August 15, 2001, added (A)(1)(a)(iv).

1999 Amendments. —

Acts 1999, No. 1100, § 1, effective August 15, 1999, in (A)(1) inserted “or specialty vehicle” throughout the subsection, inserted “converter” throughout the subsection; in (A)(1)(a) inserted “and specialty” throughout the subsection, inserted “less all allowances paid to the dealer”; inserted “converter” in (A)(1)(b); inserted “converter” in (A)(1)(c); inserted “converter” in (A)(1)(d); inserted “or converter” in (A)(2); inserted “or converter” in (B); inserted “or converter” throughout subsection (C); in (D) inserted a comma following “franchisor,” inserted “converter”; in (E) inserted “or converter” throughout the subsection, inserted “or specialty vehicle”; inserted “or converter” in (E)(1); in (E)(2) inserted a comma following “manufacturers,” inserted “converters”; inserted “a converter” in (E)(3).

Quoted Statutory Material. —

Acts 2009, No. 403, § 3, provides that “If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.”

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Research References & Practice Aids

CROSS REFERENCES**Louisiana Law. —**

Penalties; other relief, see La. R.S. 32:1260.

Succession; right of first refusal, see La. R.S. 32:1267.

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La. R.S. § 32:1268.2

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LexisNexis® Louisiana Annotated Statutes > Louisiana Revised Statutes > Title 32. Motor vehicles and traffic regulation (Chs. 1 — 18) > Chapter 6. Distribution and Sale of Motor Vehicles (Pts. 1 — 5) > Part 1. General Provisions Applicable to Motor Vehicles and Recreational Products (§§ 32:1251 — 32:1269)

§ 32:1268.2. Manufacturer termination of line-make; manufacturer bankruptcy; license.

Notwithstanding the terms of any franchise or other 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.

History

Acts 2009, No. 403, § 1, eff. July 7, 2009.

Annotations

Notes

Quoted Statutory Material. —

Acts 2009, No. 403, § 3, provides that "If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable."

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La. R.S. § 32:1269

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§ 32:1269. Venue and choice of law for litigation or arbitration.

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

History

Added by Acts 1988, No. 247, § 1; Amended by Acts 2005, No. 500, § 1, eff. July 12, 2005.

Annotations

Notes

Amendment Notes

2005 Amendments. —

2001 Amendments. —

1999 Amendments. —

2005 Amendments. —

Acts 2005, No. 500, § 1, effective July 12, 2005, redesignated former R.S. 32:1256.1 as R.S. 32:1269.

2001 Amendments. —

Acts 2001, No. 1054, § 1, effective August 15, 2001, rewrote this section, which read: “Venue for litigation or arbitration A provision contained in a franchise requiring that arbitration or litigation be conducted outside this state is void and unenforceable.”

1999 Amendments. —

Acts 1999, No. 1100, § 1, effective August 15, 1999, inserted “litigation or” in the section heading; rewrote the former section, which read: “The venue for an arbitration proceeding required by the motor vehicle dealer sales and

service agreement with the manufacturer shall be in Louisiana and not inconsistent with Louisiana law. It is the public policy of this state that the venue provided for herein may not be modified by contract.”

Quoted Statutory Material. —

Acts 2005, No. 500, § 2, provides that “the provisions of this Act are interpretive, procedural, and remedial and shall be applied retroactively.”

Research References & Practice Aids

TREATISES AND LAW REVIEWS

Louisiana Law Reviews. —

Article: Obligations. 46 La. L. Rev. 595 (January, 1986).

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