

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 921 Session of 2009

INTRODUCED BY TOMLINSON, ERICKSON, BAKER, BOSCOLA, RAFFERTY, KASUNIC, M. WHITE, ORIE, PIPPY, WOZNIAK, GREENLEAF, WASHINGTON, MELLOW, LOGAN, FERLO, WARD, DINNIMAN, FONTANA, ALLOWAY, STOUT, STACK, TARTAGLIONE AND ARGALL, JUNE 4, 2009

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF REPRESENTATIVES, AS AMENDED, JULY 7, 2009

AN ACT

1 Amending the act of December 22, 1983 (P.L.306, No.84), entitled
2 "An act providing for the State Board of Vehicle
3 Manufacturers, Dealers and Salespersons; and providing
4 penalties," providing for the definitions of "dual" or
5 "dualing" and "line-make"; further providing for mediation
6 and arbitration, for unlawful acts by manufacturers or
7 distributors and for manufacturer or distributor repurchase
8 of inventory and equipment.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 2 of the act of December 22, 1983
12 (P.L.306, No.84), known as the Board of Vehicles Act, is amended
13 by adding definitions to read:

14 Section 2. Definitions.

15 The following words and phrases when used in this act shall
16 have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 * * *

19 "Dual" or "dualing." A new vehicle dealership having two or

1 more line-makes of new vehicles located in the same dealership
2 facilities.

3 * * *

4 "Line-make." Groups of vehicles that are offered for sale,
5 lease or distribution under a common name, trademark, service
6 mark or brand name of the manufacturer or distributor of those
7 same vehicles.

8 * * *

9 Section 2. Section 11 of the act, added April 19, 1996
10 (P.L.104, No.27), is amended to read:

11 Section 11. Mediation and arbitration.

12 (a) Mediation of disputes between licensees.--

13 (1) A dealer or distributor may not file a complaint,
14 petition or protest or bring an action in a court of
15 competent jurisdiction against a manufacturer or distributor
16 based on an alleged violation of this act or in a protest
17 action under this act regarding an establishment, relocation
18 or termination of a franchise agreement unless the dealer or
19 distributor serves a demand for mediation upon the
20 manufacturer or distributor before or contemporaneous with
21 the filing of the complaint, petition or protest or the
22 bringing of an action. A demand for mediation shall be in
23 writing and served upon the manufacturer or distributor by
24 certified mail at an address designated for that manufacturer
25 or distributor within records of the dealer or distributor.
26 The demand for mediation shall contain a brief statement of
27 the dispute and the relief sought by the dealer or
28 distributor filing the demand.

29 (2) Within 20 days after the date a demand for mediation
30 is served, the parties shall mutually select an independent

1 mediator and meet with that mediator for the purpose of
2 attempting to resolve the dispute. The meeting place shall be
3 in this Commonwealth in a location selected by the mediator.
4 The mediator may extend the date of the meeting for good
5 cause shown by either party or upon stipulation of both
6 parties.

7 (3) The service of a demand for mediation under
8 paragraph (1) shall stay the time for the filing of any
9 complaint, petition, protest or action under this act until
10 representatives of both parties have met with a mutually
11 selected mediator for the purpose of attempting to resolve
12 the dispute. If a complaint, petition, protest or action is
13 filed before the meeting, the board or court shall enter an
14 order suspending the proceeding or action until the meeting
15 has occurred and may, upon written stipulation of all parties
16 to the proceeding or action that they wish to continue to
17 mediate under this subsection, enter an order suspending the
18 proceeding or action for as long a period as the board or
19 court considers appropriate. A suspension order issued under
20 this paragraph may be revoked upon motion of any party or
21 upon motion of the board or the court.

22 (4) The board shall encourage dealers, manufacturers and
23 distributors to establish, maintain and administer a panel of
24 mediators who have the character, ability and training to
25 serve as mediators and who have knowledge of the vehicle
26 industry.

27 (5) Mandatory mediation under this section shall not be
28 required of [manufacturers,] any of the following:

29 (i) A dealer seeking to dual two or more franchises
30 or a dealer seeking a relocation involving a request to

1 dual two or more franchises unless another dealer of the
2 same line-make has a right to protest the proposed
3 relocation under section 27.

4 (ii) Manufacturers, distributors or dealers of
5 motorcycles.

6 (b) Arbitration of disputes between licensees.--After a
7 dispute arises, the licensees may voluntarily agree to submit a
8 dispute arising under this act pertaining to a complaint,
9 petition, protest or action to binding or nonbinding
10 arbitration. Any arbitration proceeding shall be voluntary,
11 initiated by serving a written demand for arbitration on the
12 other party, and shall be conducted under the provisions of 42
13 Pa.C.S. Ch. 73 Subch. A (relating to statutory arbitration) and
14 administered by representatives of dealers, manufacturers or
15 distributors.

16 (c) Immunity and presumption of good faith by mediators and
17 arbitrators.--A mediator or arbitrator is immune from civil
18 liability for any good faith act or omission within the scope of
19 the mediator's or arbitrator's performance of his powers and
20 duties under this section. Every act or omission of a mediator
21 or arbitrator is presumed to be a good faith act or omission.
22 This presumption may be overcome only by clear and convincing
23 evidence.

24 Section 3. Section 12 of the act, amended October 18, 2000,
25 (P.L.577, No.75), is amended to read:

26 Section 12. Unlawful acts by manufacturers or distributors.

27 (a) Unlawful coercive acts.--It shall be a violation for any
28 manufacturer, factory branch, distributor, field representative,
29 officer, agent or any representative whatsoever of such
30 manufacturer, factory branch or distributor licensed under this

1 act to require, attempt to require, coerce or attempt to coerce
2 any new vehicle dealer in this Commonwealth to:

3 (1) Order or accept delivery of any new vehicle, part or
4 accessory thereof, equipment or any other commodity not
5 required by law which shall not have been voluntarily ordered
6 by the new vehicle dealer, except that this paragraph is not
7 intended to modify or supersede any terms or provisions of
8 the franchise requiring new vehicle dealers to market a
9 representative line of those vehicles which the manufacturer
10 or distributor is publicly advertising.

11 (2) Order or accept delivery of any new vehicle with
12 special features, accessories or equipment not included in
13 the list price of such vehicles as publicly advertised by the
14 manufacturer or distributor.

15 (3) Participate monetarily in an advertising campaign or
16 contest or to purchase unnecessary or unreasonable quantities
17 of any promotional materials, training materials, showroom or
18 other display decorations or materials at the expense of the
19 new vehicle dealer.

20 (4) Enter into any agreement with the manufacturer or to
21 do any other act prejudicial to the new vehicle dealer by
22 threatening to terminate or not renew a franchise or any
23 contractual agreement existing between the dealer and the
24 manufacturer or distributor, except that this paragraph is
25 not intended to preclude the manufacturer or distributor from
26 insisting on compliance with the reasonable terms or
27 provisions of the franchise or other contractual agreement
28 and notice in good faith to any new vehicle dealer of the new
29 vehicle dealer's violation of such terms or provisions shall
30 not constitute a violation of the act.

1 (5) Change the capital structure of the new vehicle
2 dealer or the means by or through which the new vehicle
3 dealer finances the operation of the dealership, provided
4 that the new vehicle dealer at all times meets any reasonable
5 capital standards determined by the manufacturer or
6 distributor in accordance with uniformly applied criteria,
7 and also provided that no change in the capital structure
8 shall cause a change in the principal management or have the
9 effect of a sale of the franchise without the consent of the
10 manufacturer or distributor. The consent shall be granted or
11 denied within 60 days of receipt of a written request from
12 the new vehicle dealer.

13 (6) (i) Refrain from participation in the management
14 of, investment in or the acquisition of any other line of
15 new vehicle or related products. This paragraph does not
16 apply unless the new vehicle dealer maintains a
17 reasonable line of credit for each make or line of new
18 vehicle, the new vehicle dealer remains in compliance
19 with the reasonable terms of the franchise agreement and
20 any reasonable facilities requirements of the
21 manufacturer or distributor, and no change is made in the
22 principal management of the new vehicle dealer. The
23 reasonable facilities requirements shall not include any
24 requirement that a new vehicle dealer establish or
25 maintain exclusive facilities, personnel or display space
26 when such requirements or any of them would be
27 unreasonable in light of economic conditions and would
28 not otherwise be justified by reasonable business
29 considerations. [Before the addition of a line-make to
30 the dealership facilities, the new vehicle dealer shall

1 first request the consent of the manufacturer or
2 distributor if required by the franchise agreement. Any
3 decision of the manufacturer or distributor with regard
4 to dualing of two or more franchises shall be rendered
5 within 60 days of receipt of a written request from the
6 new vehicle dealer. Failure on the part of the
7 manufacturer or distributor to timely respond to a
8 dualing request shall be deemed to be an approval of the
9 new vehicle dealer's request. No automobile, motorcycle
10 or truck manufacturer or distributor shall limit or
11 restrict the addition of a line-make to the dealership
12 facilities where the new vehicle dealer maintains a
13 reasonable line of credit for each make or line of new
14 vehicle and the new vehicle dealer remains in compliance
15 with the reasonable terms of the franchise agreement and
16 any reasonable facilities requirements of an automobile,
17 motorcycle or truck manufacturer or distributor.]

18 (ii) (A) Nothing in this paragraph shall permit the ←
19 DUALING OR relocation and addition of a line-make to ←
20 the dealership facilities without the new vehicle
21 dealer providing written certification to the
22 manufacturer or distributor that the new vehicle
23 dealer, with the addition of a line-make by the new
24 vehicle dealer, will maintain a reasonable line of
25 credit for each make or line of new vehicle and the
26 new vehicle dealer will remain in compliance with the
27 reasonable terms of the franchise agreement and any
28 reasonable facilities requirements of the
29 manufacturer or distributor, excluding any exclusive
30 facility or nondualing requirements.

1 (B) THE DEALER SHALL PROVIDE THE FOLLOWING
2 INFORMATION:

3 (I) THE ADDRESS OF THE PROPOSED NEW
4 LOCATION, IF APPLICABLE;

5 (II) A BRIEF DESCRIPTION OF THE PROPOSED
6 FACILITY; AND

7 (III) THE OWNER OF THE PROPOSED NEW
8 LOCATION.

9 (C) Any objection by the manufacturer or distributor
10 with regard to the DUALING OR relocation and dualing
11 of two or more franchises shall be delivered to the
12 dealer within 30 45 days of receipt of the written
13 certification from the new vehicle dealer. Failure on
14 the part of the manufacturer or distributor to timely
15 respond to a DUALING OR relocation and dualing
16 certification shall be deemed to be an approval of
17 the new vehicle dealer's certification notice of
18 DUALING OR relocation and dualing of two or more
19 franchises. The manufacturer or distributor shall
20 execute and deliver a franchise reflecting the
21 relocated address of the dealership facilities to the
22 new vehicle dealer within 30 days of the date of the
23 deemed approval.

24 (iii) A dealer may file a complaint, petition or
25 protest, or bring an action in a court of competent
26 jurisdiction against a manufacturer or distributor, based
27 on a denial of a request by a dealer to DUAL OR relocate
28 and dual two or more franchises without first going
29 through mediation required under section 11. If a DUALING
30 OR relocation and dualing denial protest is filed with

1 the board, a hearing shall be held within 45 days of the
2 protest's filing and a final determination issued by the
3 board within 90 days of the protest filing. The burden of
4 proof shall be on the manufacturer or distributor to show
5 that the DUALING OR relocation and dualing is ←
6 unreasonable. No automobile, motorcycle or truck
7 manufacturer or distributor may limit or restrict the
8 addition of a line-make to the dealership facilities if
9 the new vehicle dealer maintains a reasonable line of
10 credit for each make or line of new vehicle and the new
11 vehicle dealer remains in compliance with the reasonable
12 terms of the franchise agreement and any reasonable
13 facilities requirements of an automobile, motorcycle or
14 truck manufacturer or distributor. Notwithstanding this ←
15 subparagraph, this THIS paragraph shall ALSO apply if the ←
16 dealer seeks to dual two or more line-makes and no
17 relocation will occur, but this subparagraph. THIS ←
18 PARAGRAPH shall not impair the rights of another dealer
19 of the same line-make to protest a proposed relocation
20 under section 27.

21 (7) Prospectively assent to a release, assignment,
22 novation, waiver or estoppel which would relieve any person
23 from liability to be imposed by this act or to require any
24 controversy between a new vehicle dealer and a manufacturer,
25 distributor or representative to be referred to any person
26 other than the duly constituted courts of the Commonwealth or
27 the United States of America, if such referral would be
28 binding upon the new vehicle dealer. A dealer and the
29 manufacturer, distributor or representative, by themselves or
30 through their respective counsel, are permitted to agree to

1 execute a written agreement or to arbitrate in a binding or
2 nonbinding manner after a controversy arises.

3 (8) Expand, construct or significantly modify facilities
4 without assurances that the manufacturer or distributor will
5 provide a reasonable supply of new vehicles within a
6 reasonable time so as to justify such an expansion in light
7 of the market and economic conditions [or require a separate
8 facility for the sale or service of a line-make of a new
9 vehicle if the market and economic conditions do not clearly
10 justify the separate facility].

11 (8.1) Unreasonably expand, construct or significantly
12 modify facilities in light of the market and economic
13 conditions or require a separate facility for the sale or
14 service of a line-make of a new vehicle if the market and
15 economic conditions do not clearly justify the separate
16 facility.

17 (9) Agree as a condition to granting or renewing a
18 franchise to waive, limit or disclaim a right that the dealer
19 may have to protest the establishment or relocation of
20 another vehicle dealer in the relevant market area as
21 provided in section 27, unless such agreement is voluntary.

22 (b) Violations.--It shall be a violation of this act for any
23 manufacturer, factory branch, distributor, field representative,
24 officer, agent or any representative whatsoever of such
25 manufacturer, factory branch or distributor licensed under this
26 act to:

27 (1) Delay, refuse or fail to deliver new vehicles or new
28 vehicle parts or accessories in a reasonable time and in
29 reasonable quantity relative to the new vehicle dealer's
30 facilities and sales potential after acceptance of an order

1 from a new vehicle dealer having a franchise for the retail
2 sale of any new vehicle sold or distributed of an order from
3 a new vehicle dealer having a franchise for the retail sale
4 of any new vehicle sold or distributed by the manufacturer or
5 distributor as are covered by such franchise, if such
6 vehicle, parts or accessories are publicly advertised as
7 being available for immediate delivery. There is no violation
8 if the failure is caused by acts or causes beyond the control
9 of the manufacturer or distributor.

10 (2) Unfairly discriminate among its new vehicle dealers
11 with respect to warranty, recall, service contract or any
12 other service required by the manufacturer or distributor
13 with regard to labor or parts reimbursement.

14 (3) Unreasonably withhold consent to the sale, transfer
15 or exchange of the franchise to a qualified buyer capable of
16 being licensed as a new vehicle dealer in this Commonwealth
17 who meets the manufacturer's or distributor's reasonable
18 requirements for appointment as a dealer.

19 (4) [Arbitrarily and capriciously] Unreasonably withhold
20 consent to the relocation of an existing new vehicle dealer.
21 If the relocation involves dualing of two or more franchises,
22 the requirements of subsection (a)(6)(ii) and (iii) shall
23 apply and paragraph (5) shall not apply.

24 (5) Fail to respond in writing to a request for consent
25 as specified in paragraphs (3) and (4) within 60 days of
26 receipt of a written request on the forms, if any, generally
27 utilized by the manufacturer or distributor for such purposes
28 and containing the information required. The failure to
29 respond within the time period set forth in this paragraph
30 shall be deemed to be approval of the request, and the

1 manufacturer or distributor shall execute and deliver a
2 franchise to the applicant within 30 days of the expiration
3 of this time period. A manufacturer or distributor shall
4 acknowledge in writing to the applicant the receipt of the
5 forms, and, if the manufacturer or distributor requires
6 additional information to complete its review, the
7 manufacturer or distributor shall notify the applicant within
8 15 days of the receipt of the forms. If the manufacturer or
9 distributor fails to request additional information from the
10 applicant within 15 days after receipt of the initial forms,
11 the 60-day time period for approval shall be deemed to run
12 from the initial receipt date. Otherwise, the 60-day time
13 period for approval shall run from receipt of the
14 supplemental requested information. In no event shall the
15 total time period for approval exceed 75 days from the date
16 of the receipt of the initial forms.

17 (6) Prevent or attempt to prevent by contract or
18 otherwise, any new vehicle dealer from changing the executive
19 management control of the new vehicle dealer unless the
20 manufacturer or distributor, having the burden of proof, can
21 show that such change of executive management will result in
22 executive management or control by a person or persons who
23 are not of good moral character or who do not meet
24 reasonable, preexisting, and, with consideration given to the
25 volume of sales and service of the dealership, uniformly
26 applied minimum business experience standards. Where the
27 manufacturer or distributor rejects a proposed change in
28 executive management control, the manufacturer or distributor
29 shall give written notice of its reasons to the dealer within
30 60 days of notice to the manufacturer by the dealer of the

1 proposed change; otherwise the change in the executive
2 management of the new vehicle dealer shall be presumptively
3 deemed approved.

4 (7) Offer in connection with a sale of a new vehicle or
5 vehicles to the Federal Government, the Commonwealth or any
6 political subdivision thereof, any discounts, refunds or any
7 other type of inducement to any new vehicle dealer without
8 making the same offer or offers available to all other of its
9 new vehicle dealers within this Commonwealth. This paragraph
10 shall not be construed to prevent the offering of incentive
11 programs or other discounts if the discounts are equally
12 available to all franchised vehicle dealers in this
13 Commonwealth on a proportionally equal basis.

14 (8) Fail to indemnify its franchised dealers,
15 notwithstanding the terms of any franchise agreement, against
16 any judgment for damages or settlement approved in writing by
17 the manufacturer or distributor, including, but not limited
18 to, court costs and reasonable attorney fees of the new
19 vehicle dealer, arising out of complaints, claims or
20 lawsuits, including, but not limited to, strict liability,
21 negligence, misrepresentation, express or implied warranty or
22 rescission of the sale as defined in 13 Pa.C.S. § 2608
23 (relating to revocation of acceptance in whole or in part) to
24 the extent that the judgment or settlement relates solely to
25 the alleged defective or negligent functions by the
26 manufacturer or distributor beyond the control of the dealer.

27 (9) Sell or exchange with a second or final stage
28 manufacturer, retail consumer or end user except through a
29 licensed new vehicle dealer. This paragraph shall not apply
30 to manufacturer or distributor sales of new vehicles to the

1 Federal Government, charitable organizations and employees of
2 the manufacturer.

3 (10) (i) Modify a franchise during the term of the
4 franchise or upon its renewal if the modification
5 substantially and adversely affects the new vehicle
6 dealer's rights, obligations, investment or return on
7 investment without giving 60 days' written notice of the
8 proposed modification to the new vehicle dealer unless
9 the modification is required by law, court order or the
10 board. Within the 60-day notice period, the new vehicle
11 dealer may file with the board and serve notice upon the
12 manufacturer or distributor a protest requesting a
13 determination of whether there is good cause for
14 permitting the proposed modification. The board shall
15 promptly schedule a hearing and decide the matter within
16 180 days from the date the protest is filed. Multiple
17 protests pertaining to the same proposed modification
18 shall be consolidated for hearing. The proposed
19 modification shall not take effect pending the
20 determination of the matter. In determining whether there
21 is good cause for permitting a proposed modification, the
22 board shall consider any relevant factors, including, but
23 not limited to:

24 (A) The reasons for the proposed modification.

25 (B) Whether the proposed modification is applied
26 to or affects all new vehicle dealers in a
27 nondiscriminatory manner.

28 (C) Whether the proposed modification will have
29 a substantial and adverse effect upon the new vehicle
30 dealer's investment or return on investment.

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

3 (E) Whether the proposed modification is
4 necessary to the orderly and profitable distribution
5 of products by the manufacturer or distributor.

6 (F) Whether the proposed modification is offset
7 by other modifications beneficial to the new vehicle
8 dealer.

9 (ii) This paragraph shall not apply to recreational
10 vehicle manufacturers, distributors or dealers.

11 (11) Fail or refuse to offer to its new vehicle dealers
12 all new model vehicles manufactured for that line-make
13 franchise or require any of its new vehicle dealers to pay an
14 unreasonable fee, unreasonably remodel or renovate the new
15 vehicle dealer's existing facilities, unreasonably purchase
16 or construct a new facility, unreasonably purchase parts,
17 supplies, tools, equipment, operational services, other
18 merchandise or unreasonably participate in training programs
19 in order to receive any new model vehicles, parts or
20 accessories. It shall not be a violation of this paragraph if
21 the manufacturer or distributor fails to supply new vehicle
22 dealers with model vehicles, parts or accessories due to
23 circumstances beyond the control of the manufacturer or
24 distributor, including, but not limited to, strike or labor
25 difficulty, shortage of materials, freight embargo or
26 temporary lack of capacity.

27 (12) Operate a system for the allocation of new vehicles
28 which is not reasonable or fair to a new vehicle dealer. Upon
29 the written request of any of its new vehicle dealers, a
30 manufacturer or distributor shall disclose to the new vehicle

1 dealer the method on which new vehicles are allocated among
2 the new vehicle dealers of the same line-make. The
3 manufacturer distributor has the burden of establishing the
4 fairness of its allocation.

5 (13) Own, operate or control, either directly or
6 indirectly, any vehicle warranty facility. Nothing in this
7 subsection shall prohibit any manufacturer or distributor
8 from owning, operating or controlling any warranty facility
9 for warranty repairs on vehicles owned or operated by the
10 manufacturer or distributor.

11 (14) Compel a dealer through a finance subsidiary of the
12 manufacturer or distributor to agree to unreasonable
13 operating requirements or to directly or indirectly terminate
14 a new vehicle dealer through the actions of a finance
15 subsidiary of the manufacturer or distributor. This paragraph
16 shall not limit the right of a financing entity to engage in
17 business practices in accordance with the trade of retail or
18 wholesale vehicle financing.

19 (15) Use any subsidiary corporation, affiliated
20 corporation or any other controlled corporation, partnership,
21 association, entity or person to accomplish what would
22 otherwise be illegal conduct under this act on the part of
23 the manufacturer or distributor.

24 (16) Release to any third party any customer information
25 which has been provided by the new vehicle dealer to the
26 manufacturer or distributor if the customer objects in
27 writing to releasing the information, unless the information
28 is necessary for the manufacturer or distributor to meet its
29 obligations to customers or new vehicle dealers under
30 requirements imposed by Federal or State law.

1 (17) Require or coerce or attempt to require or coerce a
2 new vehicle dealer to pay attorney fees of the manufacturer
3 or distributor related to hearings and appeals brought under
4 this act.

5 (18) Vary the price charged to any of its new vehicle
6 dealers, which has the effect of causing a difference in the
7 price of any similarly equipped new vehicle to its new
8 vehicle dealers or to the ultimate purchaser. This paragraph
9 shall not be construed to prevent the offering of incentive
10 programs or other discounts if the incentive or discounts are
11 available to all competing new vehicle dealers of the same
12 line-make in this Commonwealth on a proportionately equal
13 basis.

14 (c) Restriction on ownership of dealer.--

15 (1) Except as otherwise provided in this subsection, a
16 manufacturer or distributor shall not:

17 (i) own or hold an interest, other than a passive,
18 minority interest in a publicly traded dealer held for
19 investment purposes, in a dealer licensed under this act
20 which is engaging in the business of buying, selling or
21 exchanging vehicles; or

22 (ii) operate or control a dealer licensed under this
23 act which is engaging in the business of buying, selling
24 or exchanging vehicles.

25 (2) A manufacturer or distributor may own or hold an
26 interest in a dealer or otherwise operate or control a dealer
27 for a period not to exceed 12 months from the date the
28 manufacturer or distributor acquires an interest in the
29 dealer if:

30 (i) The person from whom the manufacturer or

1 distributor acquired the dealer was a franchised dealer.

2 (ii) The dealer is for sale by the manufacturer or
3 distributor at a reasonable price and on reasonable terms
4 and conditions.

5 (3) On a showing by a manufacturer or distributor of
6 good cause, the board may extend the time limit set forth in
7 paragraph (2). An extension under this paragraph may not
8 exceed 12 months. Where an extension under this paragraph is
9 sought, the manufacturer or distributor shall provide notice
10 delivered 30 days before the extension request is filed with
11 the board to all the same line-make dealers within a ten-mile
12 radius of the manufacturer or distributor owned, operated or
13 controlled dealer. An application for an extension is subject
14 to protest by a dealer of the same line-make who is within
15 the ten-mile radius of the manufacturer or distributor owned,
16 operated or controlled dealer.

17 (4) For the primary purpose of broadening the diversity
18 of its dealer body and enhancing opportunities for qualified
19 persons who are part of a group who have historically been
20 underrepresented in its dealer body or other qualified
21 persons who lack the resources to purchase a dealer outright,
22 a manufacturer or distributor may temporarily own an interest
23 in a dealer if the manufacturer's or distributor's
24 participation in the dealer is in a bona fide relationship
25 with a franchised dealer who:

26 (i) At or prior to the time the prospective dealer
27 takes an equity interest in the dealer, the prospective
28 dealer is obligated to make a significant investment in
29 the dealer, subject to loss.

30 (ii) Has an ownership interest in the dealer.

1 (iii) Operates the dealer under a written agreement
2 to acquire full ownership of the dealer within a
3 reasonable time and under reasonable terms and
4 conditions.

5 (5) A manufacturer or distributor shall not unfairly
6 discriminate or compete in terms of any sales, service or
7 operational activities with a new vehicle dealer of the same
8 line-make when a manufacturer or distributor operates a new
9 vehicle dealer under this subsection.

10 (6) A manufacturer may own, directly or indirectly, an
11 interest in an entity that owns, operates or controls a motor
12 vehicle dealership trading solely in motor vehicles having a
13 gross vehicle weight less than 8,500 pounds that are of the
14 same line-make franchised by the manufacturer, provided that
15 each of the following conditions are met:

16 (i) All of the motor vehicle dealerships selling
17 such manufacturer's motor vehicles in this Commonwealth
18 trade exclusively in the manufacturer's line-make.

19 (ii) All of the manufacturer's franchise agreements
20 confer rights on the dealer of the line-make to develop
21 and operate, within a defined geographic territory or
22 area, as many dealership facilities as the dealer and
23 manufacturer shall agree are appropriate.

24 (iii) Not fewer than half of the dealers of the
25 line-make within this Commonwealth own and operate two or
26 more dealership facilities in the geographic territory or
27 area covered by the franchise agreement with the
28 manufacturer.

29 (iv) During any period in which the manufacturer has
30 such an ownership interest, the manufacturer has no more

1 than 12 franchise agreements with new motor vehicle
2 dealers licensed by the board to do business within this
3 Commonwealth.

4 (v) Except as otherwise permitted under other
5 provisions of this act, the manufacturer does not acquire
6 or hold, either directly or indirectly, an ownership
7 interest of more than 45% in any motor vehicle dealership
8 that the manufacturer did not already own, directly or
9 indirectly, as of the effective date of this subsection.

10 (vi) As of the effective date of this subsection,
11 the manufacturer shall have continuously owned, directly
12 or indirectly, for a period of not less than 18 months,
13 one or more new motor vehicle dealerships in this
14 Commonwealth of the same line-make as the manufacturer.

15 (d) Applicability.--

16 (1) Subsections (b)(11) through (17) and (c) shall not
17 apply to manufacturers, distributors or dealers of
18 manufactured housing or recreational vehicles.

19 (2) Subsections (b)(13) and (15) and (c) shall not apply
20 to the ownership or activities of a manufacturer in the
21 operation of a licensed dealer or a licensed dealer that
22 fulfills the following conditions:

23 (i) The manufacturer maintains an ownership interest
24 in, operates or controls a licensed dealer whose primary
25 business purpose is the rental of vehicles.

26 (ii) Vehicles sold by the licensed dealer primarily
27 engaged in the business of rental vehicles are limited to
28 those vehicles used for rental purposes or vehicles
29 obtained in trade for such vehicles.

30 (iii) Any warranty repairs are limited to those

1 repairs conducted on the vehicles used in the vehicle
2 rental business or vehicles sold by the licensed dealer.

3 Section 4. Section 17 of the act, added April 19, 1996
4 (P.L.104, No.27), is amended to read:

5 Section 17. Manufacturer or distributor repurchase of inventory
6 and equipment.

7 (a) Return of property for repurchase.--A new vehicle dealer
8 shall return property, including, but not limited to, vehicle
9 inventory, parts, equipment, tools and signs, as permitted under
10 this section or as set forth in the franchise agreement, to the
11 manufacturer or distributor within 90 days of the effective date
12 of any termination or nonrenewal of a franchise or upon a
13 termination or cessation of a part of a manufacturer's or
14 distributor's business operations throughout the United States
15 which is not part of any change in ownership, operation or
16 control of all or any part of the manufacturer's or
17 distributor's business under section 14. The manufacturer or
18 distributor shall supply the new vehicle dealer with
19 instructions on the method by which the new vehicle dealer must
20 return the property to the manufacturer or distributor. Within
21 60 days of tender of the property to the manufacturer or
22 distributor, the manufacturer or distributor, including medium
23 and heavy-duty truck component and engine manufacturers or
24 distributors who provide integral parts of vehicles or provide
25 major components by selling directly to dealers, shall
26 repurchase from the new vehicle dealer and remit payment to the
27 new vehicle dealer in accordance with their respective interest
28 in:

29 (1) Any new, undamaged and unsold vehicle inventory [of
30 the current model year or purchased from a manufacturer or

1 distributor within 120 days prior to receipt of notice of
2 termination or nonrenewal], whether acquired from the
3 manufacturer or distributor or from another dealer of the
4 same line-make IN THE ORDINARY COURSE OF BUSINESS within 18 ←
5 months of the termination date, provided the vehicle has less
6 than [500] 750 miles registered on the odometer, not
7 including mileage incurred in delivery from the manufacturer
8 or in transporting the vehicle between dealers for sale, at
9 the dealer's net acquisition cost, plus any cost to the
10 dealer for returning the vehicle inventory to the
11 manufacturer or distributor. A dealer shall be entitled to
12 the payment under this paragraph for new and undamaged motor
13 vehicles having a gross vehicle weight rating of at least
14 10,001 pounds of current and two prior model years as
15 determined on a model-by-model basis within the line-make.

16 (2) All new, unused, undamaged parts listed in the
17 current price catalog acquired from a manufacturer or
18 distributor or a source approved or recommended by the
19 manufacturer or distributor at the dealer price listed in the
20 current parts catalog, less applicable allowances, plus 5% of
21 the catalog price of the part for the cost of packing and
22 returning the parts to the manufacturer or distributor.
23 Reconditioned or core parts shall be valued at their core
24 value, the price listed in the current parts catalog or the
25 amount paid for expedited return of core parts, whichever is
26 higher.

27 (3) Any special tools or equipment offered for sale
28 during the three years preceding termination or nonrenewal
29 and each trademark or trade name bearing signs which was
30 recommended or required by the manufacturer or distributor at

1 fair market value at the time the notice of termination or
2 nonrenewal is given.

3 In the event the inventory is subject to a security interest,
4 the manufacturer may make payment jointly to the dealer and the
5 holder of the security interest.

6 (b) Failure to pay sums due.--A manufacturer or distributor
7 who fails to pay those sums due the dealer within the prescribed
8 time or at such time as the dealer proffers good title prior to
9 the prescribed time for payment is liable to the new vehicle
10 dealer for:

11 (1) the greater of dealer net acquisition cost, fair
12 market value or current price of inventory;

13 (2) interest on the amount due, calculated at the rate
14 applicable to a judgment of court; and

15 (3) reasonable attorney fees and costs.

16 (c) Limited applicability.--This section shall not apply to
17 manufacturers, distributors or dealers of recreational vehicles
18 or manufactured housing, nor shall it apply to motorcycle
19 manufacturers, distributors or dealers except when the
20 unilateral termination or failure to renew is by the
21 manufacturer or distributor.

22 Section 5. This act shall take effect in 60 days.