

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2329 Session of  
2005

INTRODUCED BY GANNON, MARKOSEK, MANN, TIGUE, STABACK, GINGRICH,  
SOLOBAY, GOOD, HERMAN, READSHAW, CREIGHTON, DONATUCCI, WILT,  
CAPPELLI, BELFANTI, HASAY, YOUNGBLOOD, CALTAGIRONE AND  
J. TAYLOR, DECEMBER 14, 2005

REFERRED TO COMMITTEE ON TRANSPORTATION, DECEMBER 14, 2005

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," defining "retail gasoline dispenser" and "retail  
5 heating oil dispenser"; further providing for powers and  
6 duties of the State Board of Vehicle Manufacturers, Dealers  
7 and Salespersons and for license to engage in business;  
8 providing for unlawful act by retail gasoline dispenser or  
9 retail heating oil dispenser; further providing for  
10 penalties; and providing for civil action for violation by  
11 retail gasoline dispenser or retail heating oil dispenser.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

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

17 Section 2. Definitions.

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

21 \* \* \*

1     "Retail gasoline dispenser." A person that owns a vehicle  
2     used to transport gasoline which is sold on a retail basis.

3     "Retail heating oil dispenser." A person that owns a vehicle  
4     used to transport heating oil.

5     \* \* \*

6     Section 2. Section 4 of the act, amended October 18, 2000  
7     (P.L.577, No.75), is amended to read:

8     Section 4. Powers and duties of board.

9     (a) Powers and duties.--The board shall have the power and  
10    its duty shall be to:

11         (1) Provide for and regulate the licensing of retail  
12         gasoline dispensers, retail heating oil dispensers,  
13         salespersons, dealers, vehicle auctions, manufacturers,  
14         factory branches, distributors, distributor branches and  
15         factory or distributor representatives as defined in this  
16         act.

17         (2) Review and pass upon the qualifications of  
18         applicants for licensure and to issue, except as otherwise  
19         provided herein, a license to engage in the said businesses  
20         to any applicant who is approved by the board and who meets  
21         the requirements of this act and regulations promulgated in  
22         accordance with this act.

23         (3) Investigate on its own initiative, upon complaint of  
24         the Department of Transportation, Department of Community and  
25         Economic Development, Department of Revenue or the Office of  
26         the Attorney General, any law enforcement officer or upon the  
27         verified complaint in writing of any person, any allegations  
28         of the wrongful act or acts of any licensee or person  
29         required to be licensed hereunder. Duly authorized agents of  
30         the Bureau of Professional and Occupational Affairs shall be

1 authorized to issue administrative citations for violations  
2 of this act in accordance with section 5 of the act of July  
3 2, 1993 (P.L.345, No.48), entitled "An act empowering the  
4 General Counsel or his designee to issue subpoenas for  
5 certain licensing board activities; providing for hearing  
6 examiners in the Bureau of Professional and Occupational  
7 Affairs; providing additional powers to the Commissioner of  
8 Professional and Occupational Affairs; and further providing  
9 for civil penalties and license suspension."

10 (4) Administer and enforce this act and to impose  
11 appropriate administrative discipline upon licensees found to  
12 be in violation of this act.

13 (5) Bring criminal prosecutions for unauthorized,  
14 unlicensed or unlawful practice and bring an action to enjoin  
15 such practices. Duly authorized agents of the bureau shall be  
16 authorized to issue citations in accordance with section 5(a)  
17 of the act of July 2, 1993 (P.L.345, No.48), entitled "An act  
18 empowering the General Counsel or his designee to issue  
19 subpoenas for certain licensing board activities; providing  
20 for hearing examiners in the Bureau of Professional and  
21 Occupational Affairs; providing additional powers to the  
22 Commissioner of Professional and Occupational Affairs; and  
23 further providing for civil penalties and license  
24 suspension," for violations of this act.

25 (6) Require each licensee to register biennially with  
26 the board.

27 (7) Keep a record showing the names and addresses of all  
28 licensees licensed under this act.

29 (8) Keep minutes and records of all its transactions and  
30 proceedings especially with relation to the issuance, denial,

1 registration, formal reprimand, suspension and revocation of  
2 licenses. In all actions or proceedings in any court, a  
3 transcript of any board record or any part thereof, which is  
4 certified to be a true copy by the board, shall be entitled  
5 to admission in evidence.

6 (9) Adopt, promulgate and enforce such rules and  
7 regulations consistent with this act as are deemed necessary  
8 and proper to effectuate the provisions of this act.

9 (10) Submit annually, to the Consumer Protection and  
10 Professional Licensure Committee of the Senate and the  
11 Professional Licensure Committee of the House of  
12 Representatives, a description of the types of complaints  
13 received, status of the cases, board action which has been  
14 taken and length of time from the initial complaint to final  
15 board resolution.

16 (11) Submit annually to the department an estimate of  
17 the financial requirements of the board for its  
18 administrative, investigative, legal and miscellaneous  
19 expenses.

20 (12) Submit annually to the House and Senate  
21 Appropriations Committees, 15 days after the Governor has  
22 submitted his budget to the General Assembly, a copy of the  
23 budget request for the upcoming fiscal year which the board  
24 previously submitted to the department.

25 (b) Summary proceedings.--All law enforcement officers in  
26 this Commonwealth may institute summary criminal proceedings in  
27 accordance with the Pennsylvania Rules of Criminal Procedure for  
28 violations of this act. Any person who violates this act shall  
29 be subject to criminal prosecution as provided in section 28.

30 Section 3. Section 5(a) of the act, amended April 19, 1996

1 (P.L.104, No.27), is amended to read:

2 Section 5. License to engage in business.

3 (a) License required.--

4 (1) To promote the public safety and welfare, it shall  
5 be unlawful for any person to engage in the business as a  
6 retail gasoline dispenser, retail heating oil dispenser,  
7 salesperson, dealer, branch lot, wholesale vehicle auction,  
8 public or retail vehicle auction, manufacturer, factory  
9 branch, distributor, distributor branch, factory  
10 representative or distributor representative within this  
11 Commonwealth unless the person has secured a license as  
12 required under this act.

13 (2) A person, including, but not limited to,  
14 salespersons, shall not engage in the business for his own  
15 benefit or profit unless he is licensed in accordance with  
16 this act.

17 (3) A person shall not act as, offer to act as or hold  
18 himself out to be a broker in the advertising, buying or  
19 selling of any new or used vehicle.

20 \* \* \*

21 Section 4. The act is amended by adding a section to read:

22 Section 17.1. Unlawful act by retail gasoline dispenser or  
23 retail heating oil dispenser.

24 (a) Unlawful to engage in price gouging.--It shall be a  
25 violation of this act for a retail gasoline dispenser or a  
26 retail heating oil dispenser to engage in price gouging.

27 (b) Definitions.--As used in this section, the following  
28 words and phrases shall have the meanings given to them in this  
29 subsection:

30 "Abnormal disruption of the market." A set of conditions

1 which result in a national, State or local state of emergency  
2 being declared or a named tropical storm or hurricane which  
3 threatens this Commonwealth.

4 "Price gouging." Charging a price for gasoline sold at the  
5 retail level or heating oil sold to consumers which represents a  
6 gross disparity between the price of gasoline or heating oil  
7 immediately preceding the onset of an abnormal disruption of the  
8 market and the price charged after the abnormal disruption of  
9 the market. The term does not include the amount charged which  
10 is attributable to additional costs imposed upon a retail  
11 gasoline dispenser or a retail heating oil dispenser by retail  
12 gasoline or heating oil suppliers.

13 Section 5. Section 28 of the act, amended October 18, 2000  
14 (P.L.577, No.75), is amended to read:

15 Section 28. Penalties.

16 (a) Criminal penalties for violation of this act.--Whoever  
17 shall give any false or forged evidence of any kind to the board  
18 or to any member in order to obtain a license, or shall refuse  
19 upon request to furnish business records, documents and files  
20 relating to practice under this act, or shall otherwise violate  
21 the provisions of this act shall be guilty of a summary offense  
22 and, upon conviction, shall be ordered to pay a fine of \$1,000.  
23 A licensee shall be subject to criminal prosecution under this  
24 subsection for violation of any provision of this act.

25 (b) Criminal penalties for unlicensed activity.--Whoever  
26 engages in the business of retail gasoline dispenser, retail  
27 heating oil dispenser, vehicle dealer, manufacturer, factory  
28 branch, distributor, distributor branch, auction or broker or  
29 engages in the occupation of vehicle salesperson or factory or  
30 distributor representative without being licensed and registered

1 as required or exempted from licensure as provided, or shall  
2 present or attempt to use as his own the license of another,  
3 shall be guilty of a summary offense and, upon conviction, shall  
4 be sentenced to pay a fine of \$1,000 or any higher amount equal  
5 to double the pecuniary gain derived from the offense. For the  
6 purpose of this act the sale of each vehicle in violation of  
7 this act constitutes a separate offense.

8 (c) Additional remedy.--In addition to any other civil  
9 remedy or criminal penalty provided for in this act, the board  
10 by a vote of the majority of the authorized membership of the  
11 board as provided by law, or by a vote of the majority of the  
12 duly qualified and confirmed membership, may levy a civil  
13 penalty of up to \$1,000 on any current licensee who violates any  
14 provision of this act or on any person who engages in an  
15 activity required to be licensed by this act. The board shall  
16 levy this penalty only after affording the accused party the  
17 opportunity for a hearing as provided in 2 Pa.C.S. (relating to  
18 administrative law and procedure).

19 Section 6. The act is amended by adding a section to read:

20 Section 29.1. Civil action for violation by retail gasoline  
21 dispenser or retail heating oil dispenser.

22 In addition to the civil or criminal penalties provided for  
23 in this act, the Attorney General may bring an action in a court  
24 of competent jurisdiction in the name of the Commonwealth for  
25 damages and equitable relief, including injunctive relief, if a  
26 retail gasoline dispenser or a retail heating oil dispenser has  
27 violated or is about to violate section 17.1.

28 Section 7. The provisions of this act are severable. If any  
29 provision of this act or its application to any person or  
30 circumstance is held invalid, the invalidity shall not affect

1 other provisions or applications of this act which can be given  
2 effect without the invalid provision or application.  
3 Section 8. This act shall take effect in 60 days.