

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 1880** Session of  
1981

INTRODUCED BY SPENCER, L. E. SMITH, E. Z. TAYLOR, DeVERTER AND  
LETTERMAN, OCTOBER 6, 1981

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,  
OCTOBER 6, 1981

AN ACT

1 Amending the act of September 9, 1965 (P.L.499, No.254),  
2 entitled, as reenacted and amended, "An act providing for and  
3 regulating the registration and licensing of motor vehicle  
4 and mobilehome manufacturers, dealers and salesmen, fixing  
5 fees, creating the State Board of Motor Vehicle Salesmen,  
6 imposing powers and duties on the Department of State, the  
7 Commissioner of Professional and Occupational Affairs and the  
8 board and prescribing unlawful acts and penalties and making  
9 an appropriation," further providing for certain definitions,  
10 licensing, the duties of the board, establishing or  
11 relocating dealerships, fees, penalties, further defining  
12 unlawful activities and providing the department with the  
13 authority to issue certain rules and regulations.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Sections 3, 4 and 5, act of September 9, 1965  
17 (P.L.499, No.254), known as the "Motor Vehicle Manufacturer's,  
18 Dealer's and Salesmen's License Act," reenacted and amended  
19 December 21, 1973 (P.L.408, No.144), are amended to read:

20 Section 3. Definitions.--The following words and phrases  
21 when used in this act shall, for the purpose of this act, have  
22 the following meanings, respectively, except in those instances

1 where the context clearly indicates a different meaning:

2 [(1) "Board" means the State Board of Motor Vehicle  
3 Manufacturers, Dealers and Salesmen, which shall consist of ten  
4 persons to be appointed by the Governor with the advice and  
5 consent of the Senate within ninety days, which shall aid and  
6 assist in the administration of this act. The members of the  
7 board shall be residents of Pennsylvania. The Commissioner of  
8 Professional and Occupational Affairs shall be an ex officio  
9 member of the said board. Three members of the board shall be  
10 new car dealers, as defined in the act of April 29, 1959  
11 (P.L.58, No.32), known as "The Vehicle Code," who have been  
12 registered in the "Dealer's Class" under section 409 of "The  
13 Vehicle Code" for a period of at least five years immediately  
14 preceding their appointment. Two members of the board shall be  
15 used car dealers, as defined in "The Vehicle Code" who have been  
16 registered in the "Dealer's Class" under section 409 of "The  
17 Vehicle Code" for a period of at least five years immediately  
18 preceding their appointment. One member shall be a mobilehome  
19 dealer who has been registered in the "Dealer's Class" under  
20 section 409 of "The Vehicle Code" for a period of at least five  
21 years preceding his appointment. The mobilehome dealer member  
22 provided for herein shall be appointed for a term of three  
23 years. One member shall be a motor vehicle salesman, as defined  
24 hereinafter, who for a period of at least five years immediately  
25 preceding his appointment has been actively engaged in the sale  
26 of new or used motor vehicles and who is not at the time of his  
27 appointment a new car dealer or used car dealer or an officer of  
28 a corporation registered in the "Dealer's Class" or a member of  
29 a partnership registered in the "Dealer's Class." They shall be  
30 appointed for terms of three years. Three members shall be

1 members of the general public having no connection with the  
2 motor vehicle business. The three public members of the board  
3 shall be appointed for terms of three years. Of the public  
4 members initially appointed, one shall be appointed for a term  
5 of one year, one for a term of two years and one for a term of  
6 three years. One member of the board shall be elected chairman  
7 and one of whom shall be elected secretary. Of the members  
8 initially appointed, two shall be appointed for terms of one  
9 year, two for terms of two years and two for terms of three  
10 years, and shall hold office until their successors are  
11 appointed and qualified. In the event that any member shall die,  
12 resign or be removed from office during his term of office, his  
13 successor shall be appointed and hold office for the unexpired  
14 term. The members shall receive thirty dollars (\$30) per diem  
15 for each day actually engaged in attendance at meetings of the  
16 board. The members shall also receive the amount of actual  
17 traveling, hotel and other necessary expenses incurred in the  
18 performance of their duties under this act.

19 (2) "Department" means the Department of State acting by and  
20 through the Commissioner of Professional and Occupational  
21 Affairs.

22 (3) "Dealer" means any person defined as a new car dealer,  
23 or used car dealer in "The Vehicle Code." For the purposes of  
24 this act, "dealer" shall also include any person who buys, sells  
25 or exchanges house trailers or recreational vehicles at retail,  
26 whether or not such activity is a principal or substantial  
27 portion of his business.

28 (3.1) "Mobilehome dealer" means any person defined as a new  
29 mobilehome dealer or used mobilehome dealer in "The Vehicle  
30 Code" and who is qualified to be registered in the "Dealer's

1 Class" under section 409 of "The Vehicle Code."

2 (4) "Motor vehicle salesman" means any person who, for a  
3 commission, compensation or other valuable consideration, is  
4 employed as a salesman by a dealer to sell at retail motor  
5 vehicles, mobilehomes, house trailers or recreational vehicles.  
6 Any motor vehicle salesman licensed hereunder shall be licensed  
7 to sell only for one dealer at a time and his license shall  
8 indicate the name of the dealer. Included in the definition of  
9 "motor vehicle salesman" shall be the principal, an officer, or  
10 a partner of a dealer if he personally is actively engaged in  
11 the retail sale of motor vehicles, mobilehomes, house trailers  
12 or recreational vehicles.

13 (5) "Retail sale" or "sale at retail" means the act or  
14 attempted act of selling, bartering, exchanging or otherwise  
15 disposing of a motor vehicle, mobilehome, house trailer or  
16 recreational vehicle to an ultimate purchaser for use as a  
17 consumer.

18 (6) "Engaging in the occupation of motor vehicle salesman"  
19 means the retail sale during a twelve-month period of a total of  
20 five or more motor vehicles, mobilehomes, house trailers and/or  
21 recreational vehicles.

22 (7) "Recreational vehicle" means a vehicular unit primarily  
23 designed as temporary living quarters for recreational, camping,  
24 or travel use, which either has its own motive power or is  
25 mounted on or drawn by another vehicle but shall not include a  
26 camping trailer. The basic entities are: travel trailer, truck  
27 camper and motor home.

28 (8) "Camping trailer (tent trailer)" means a vehicular  
29 portable unit mounted on wheels and constructed with collapsible  
30 partial sidewalls which fold for towing by another vehicle and

1 unfold at the camp site to provide temporary living quarters for  
2 recreational, camping, or travel use.

3 (9) "Manufacturer" means any person, resident or nonresident  
4 who manufactures or assembles motor vehicles or who manufactures  
5 or installs on previously assembled truck chassis, special  
6 bodies or equipment which when installed form an integral part  
7 of the motor vehicle and which constitutes a major manufacturing  
8 alteration.

9 (10) "Distributor" or "wholesaler" means a person, resident  
10 or nonresident who in whole or part, sells or distributes motor  
11 vehicles to motor vehicle dealers, or who maintains distributor  
12 representatives.

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

18 (12) "Distributor branch" means a branch office similarly  
19 maintained by a distributor or wholesaler for the same purposes.

20 (13) "Factory representative" means a representative  
21 employed by a person who manufactures or assembles motor  
22 vehicles or by a factory branch, for the purpose of making or  
23 promoting the sale of its motor vehicles, or for supervising or  
24 contacting its dealers or prospective dealers.

25 (14) "Distributor representative" means a representative  
26 similarly employed by a distributor, distributor branch or  
27 wholesaler.

28 (15) "Person" means a person, firm, corporation or  
29 association.

30 (16) "Agreement" means a contract or franchise or any other

terminology used to describe the contractual relationship  
between manufacturers, distributors, importers and dealers.]

"Agreement" means a contract or franchise or any other  
terminology used to describe the contractual relationship  
between a manufacturer, distributor, importer or dealer and one  
or more other such persons.

"Board" means the State Board of Vehicle Manufacturers,  
Dealers and Salesmen, which shall consist of twelve persons to  
be appointed by the Governor with the advice and consent of the  
Senate within ninety days, which shall aid and assist in the  
administration of this act. The members of the board shall be  
residents of Pennsylvania. The Commissioner of Professional and  
Occupational Affairs and the Secretary of the Department of  
Transportation or his designee shall be ex officio members of  
the said board. Three members of the board shall be new car  
dealers, as defined herein, who have been actively engaged as  
such for a period of at least five years immediately preceding  
their appointment. Two members of the board shall be used car  
dealers, as defined herein, who have been actively engaged as  
such for a period of at least five years immediately preceding  
their appointment. Three members shall be mobilehome dealers as  
defined herein, who have been actively engaged as such for a  
period of at least five years preceding their appointment. The  
mobilehome dealer member currently a member of the board shall  
serve until the expiration of his current term, or until his  
successor shall be appointed. The two mobilehome dealer members  
initially appointed under this amendatory act shall be appointed  
for initially staggered terms, one to be appointed for a term of  
one year and one to be appointed for a term of two years;  
thereafter, they, or their successors, shall be appointed for

1 terms of three years. One member shall be a salesman, as defined  
2 hereinafter, who for a period of at least five years immediately  
3 preceding his appointment has been actively engaged in the sale  
4 of new or used vehicles and who is not at the time of his  
5 appointment a dealer or an officer of a corporation or a member  
6 of a partnership engaged in the business of dealer. Three  
7 members shall be members of the general public having no  
8 connection with the vehicle business. The three public members  
9 of the board shall be appointed for terms of three years. One  
10 member of the board shall be elected chairman and one shall be  
11 elected secretary. All members shall serve for terms of three  
12 years, and shall hold office until their successors are  
13 appointed and qualified. In the event that any member shall die,  
14 resign or be removed from office during his term of office, his  
15 successor shall be appointed and hold office for the unexpired  
16 term. The members shall receive thirty dollars (\$30) per diem  
17 for each day actually engaged in attendance at meetings of the  
18 board. The members shall also receive the amount of actual  
19 traveling, hotel and other necessary expenses incurred in the  
20 performance of their duties under this act.

21 "Bushing" means the practice of increasing the selling price  
22 of a car above that originally quoted the purchaser or  
23 decreasing the allowance for trade-in of a used car after the  
24 purchaser has signed a purchase order or contract which is  
25 subject to subsequent acceptance by the seller: Provided,  
26 however, That if a used car is being used as the down payment  
27 and it is not to be delivered to the dealer until the delivery  
28 of the new car, the used car may be reappraised at that time and  
29 such reappraisal value may determine the allowance made for such  
30 used car.

1       "Dealer" means all of the following:

2       New car dealer.--A person actively engaged in and devoting a  
3       substantial portion of his time in the business of buying,  
4       selling, brokering or exchanging new and used motor vehicles,  
5       trailers or semitrailers on commission or otherwise, who  
6       maintains a salesroom or garage devoted principally to the motor  
7       vehicle business and an established place of business, and who  
8       holds a contract in writing with a manufacturer, importer or  
9       distributor, giving such person selling rights for new motor  
10       vehicles, trailers or semitrailers or who is a manufacturer of  
11       motor vehicles, trailers or semitrailers or who is an importer  
12       or distributor of new motor vehicles, trailers or semitrailers  
13       who holds a contract in writing with a manufacturer of motor  
14       vehicles, trailers and semitrailers.

15       Used car dealer.--A person actively and principally engaged  
16       in and devoting a substantial portion of his time to the  
17       business of buying, selling, brokering or exchanging used motor  
18       vehicles, tractors, trailers or semitrailers, and who maintains  
19       a salesroom, garage, or used car lot, actually occupied by such  
20       person and maintains an established place of business, which  
21       established place of business shall include at least a two bay  
22       garage equipped to perform the usual and normal repair and  
23       servicing of motor vehicles or said dealer shall by written  
24       contract have available to him at all times such repair and  
25       servicing facilities and upon which or adjacent thereto is a  
26       building or a portion of a building, owned or rented by such  
27       person, where his books and records are kept, and which is  
28       devoted principally to the motor vehicle business, in which the  
29       repair of motor vehicles is subordinate or incidental to the  
30       business of buying, selling, brokering or exchanging the same.



1     New mobilehome dealer.--A person actively and principally  
2 engaged in and devoting a substantial portion of his time to the  
3 business of buying, selling or exchanging mobilehomes, house  
4 trailers or office trailers on commission, or otherwise, who  
5 maintains a minimum useable display area of five thousand square  
6 feet devoted principally to the mobilehome, house trailer or  
7 office trailer business, who maintains an established place of  
8 business and who holds a contract in writing with a manufacturer  
9 giving such person selling rights for new mobilehomes, house  
10 trailers or office trailers.

11     Used mobilehome dealer.--A person actively and principally  
12 engaged in and devoting a substantial portion of his time to the  
13 business of buying, selling or exchanging used mobilehomes,  
14 house trailers or office trailers, and who maintains a minimum  
15 useable display area of five thousand square feet, actually  
16 occupied by such person, and upon which or adjacent thereto is a  
17 building, or a portion of a building, owned or rented by such  
18 person, where his books and records are kept, and which is  
19 devoted principally to the mobilehome, house trailer or office  
20 trailer business, in which the repair of such vehicles is  
21 subordinate or incidental to the business of buying, selling or  
22 exchanging the same, and who maintains an established place of  
23 business.

24     Motorcycles and motorized pedalcycles dealer.--A person  
25 actively and principally engaged in and devoting a substantial  
26 portion of his time to the business of buying, selling or  
27 exchanging motorcycles or motorized pedalcycles on commission,  
28 or otherwise, who maintains a minimum useable display area of  
29 five thousand square feet devoted principally to the motorcycles  
30 or motorized pedalcycles who maintains an established place of

business and who holds a contract in writing with a manufacturer giving such person selling rights for new motorcycles or motorized pedalcycles.

"Department" means the Department of State acting by and through the Commissioner of Professional and Occupational Affairs.

"Distributor" or "wholesaler" means a person, resident or nonresident, who, in whole or part, sells or distributes vehicles to dealers, or who maintains distributor representatives.

"Distributor branch" means a branch office similarly maintained by a distributor or wholesaler for like purposes.

"Distributor representative" means a representative similarly employed by a distributor, distributor branch or wholesaler.

"Engaging in the occupation of salesman" means the retail sale during a twelve-month period of a total of five or more vehicles.

"Factory branch" means a branch office, maintained by a manufacturer, for the sale of vehicles to distributors or dealers or for directing or supervising, in whole or part, its representatives.

"Factory representative" means a representative employed by a manufacturer or by a factory branch for the purpose of making or promoting the sale of its vehicles, or for supervising or contacting its dealers or prospective dealers.

"Fleet owner" means any person who owns a group of fifteen or more motor vehicles.

"Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in 13 Pa.C.S. § 2103 (relating to

1 definitions and index of definitions).

2 "Manufacturer" means any person, resident or nonresident, who  
3 manufactures or assembles vehicles or who manufactures or  
4 installs on previously assembled chassis special bodies or  
5 equipment which when installed form an integral part of a  
6 vehicle and which constitute a major manufacturing alteration.

7 "Person" means a natural person, firm, co-partnership,  
8 corporation or association.

9 "Retail sale" or "sale at retail" means the act or attempted  
10 act of selling, bartering, exchanging or otherwise disposing of  
11 a vehicle to an ultimate purchaser for use as a consumer.

12 "Relevant market area" means the area within a radius of  
13 twenty miles around an existing dealer or the area of  
14 responsibility defined in the franchise, whichever is greater;  
15 except that, where a manufacturer is seeking to establish an  
16 additional new motor vehicle dealer and there are one or more  
17 existing new motor vehicle dealers of the same line-make within  
18 a ten-mile radius of the proposed dealer site, the "relevant  
19 market area" shall in all instances be the area within a radius  
20 of ten miles around an existing dealer.

21 "Salesman" means any person who, for a commission,  
22 compensation or other valuable consideration, is employed as a  
23 salesman by a dealer to sell vehicles at retail. Any salesman  
24 licensed hereunder shall be licensed to sell only for one dealer  
25 at a time and his license shall indicate the name of the dealer.  
26 Included in the definition of "salesman" shall be the principal,  
27 an officer or a partner of a dealer if he personally is actively  
28 engaged in the retail sale of vehicles.

29 "Vehicle" means every device which is or may be moved or  
30 drawn upon a highway, except devices moved by human or animal

1 power or used exclusively upon rails or tracks.

2       Section 4. License Required to Engage in the Business of  
3 [Motor Vehicle] Salesman, Manufacturer or Dealer.--In order to  
4 promote the public interest and public welfare [from and after  
5 six months of the effective date of this act], it shall be  
6 unlawful for any person, except as hereinafter provided, to  
7 engage in the business of [motor vehicle] salesman, [or motor  
8 vehicle] dealer, manufacturer, factory branch, distributor,  
9 distributor branch, factory or distributor representative within  
10 this Commonwealth unless he has secured a license as required  
11 under the provisions of this act. It shall be unlawful for any  
12 person, for a commission, compensation or other consideration,  
13 to sell, or act as salesman or sales agent in connection with  
14 the sale of, one or more mobilehomes located in a mobilehome  
15 park, as provided for in section 11, act of November 24, 1976  
16 (P.L.1176, No.261), known as the "Mobile Home Park Rights Act"  
17 unless such person shall be licensed under this act.

18       Section 5. Powers and Duties of the State Board of [Motor]  
19 Vehicle Manufacturers, Dealers and Salesmen.--The board shall  
20 have power and its duty shall be:

21       (1) To provide for and regulate the licensing of [motor  
22 vehicle salesmen and motor vehicle] salesmen, dealers, [and]  
23 manufacturers, factory branches, distributors, distributor  
24 branches, factory or distributor representatives as defined in  
25 this act, and to issue except as otherwise provided herein, a  
26 license to engage in the said businesses to any applicant who  
27 meets the requirements of this act.

28       (2) To investigate on its own initiative, on complaint of  
29 the Department of Transportation or upon the verified complaint  
30 in writing of any person any allegations of the wrongful act or

1 acts of any licensee or person required to be licensed hereunder  
2 and shall have the power to suspend or revoke licenses issued by  
3 the board if after due notice and hearing the person charged is  
4 found guilty of committing or attempting to commit any of the  
5 following acts:

6 (i) Knowingly making any substantial misrepresentation of  
7 material facts;

8 (ii) Knowingly making any false promise of a character  
9 likely to influence, persuade or induce the sale of a [motor]  
10 vehicle;

11 (iii) [Being a motor vehicle dealer or salesman, having]  
12 Having within three years prior to the application for or  
13 issuance of a license or while his current license is in force  
14 pleaded guilty, entered a plea of nolo contendere or been found  
15 guilty in a court of competent jurisdiction of this or any other  
16 state of forgery, embezzlement, obtaining money under false  
17 pretenses, extortion, conspiracy to defraud, bribery or any  
18 other crime involving moral turpitude;

19 (iv) Having knowingly failed or refused to account for or to  
20 pay over moneys or other valuables belonging to others which  
21 have come into his possession arising out of the sale of [motor]  
22 vehicles;

23 (v) Having engaged in false, deceptive or misleading  
24 advertising of [motor] vehicles;

25 (vi) Having committed any act or engaged in conduct in  
26 connection with the sale of [motor] vehicles which clearly  
27 demonstrates incompetency;

28 (vii) Having made a material misstatement in application for  
29 license;

30 (viii) Having set up, promoted or aided in the promotion of

1 a plan by which [motor] vehicles are sold to a person for a  
2 consideration and upon the further consideration that the  
3 purchaser agrees to secure one or more persons to participate in  
4 the plan by respectively making a similar purchase and in turn  
5 agreeing to secure one or more persons likewise to join in said  
6 plan, each purchaser being given the right to secure money,  
7 credits, goods or something of value, depending upon the number  
8 of persons joining in the plan;

9 (ix) Having engaged in the buying, selling, exchanging,  
10 trading or otherwise dealing in [new or used motor] vehicles on  
11 Sunday in violation of [section 7362 of Title 18 of the act of  
12 November 25, 1970 (P.L.707, No.230), known as the "Consolidated  
13 Pennsylvania Statutes." ] 18 Pa.C.S. § 7362 (relating to trading  
14 in motor vehicles and trailers).

15 (x) Being a motor vehicle dealer, having failed to have an  
16 "Established Place of Business" as defined in ["The Vehicle  
17 Code"] Title 75 Pa.C.S. § 101 (relating to definitions).

18 (xi) Being a manufacturer, factory branch, distributor,  
19 field representative, officer, agent or any representative  
20 [whatsoever of such motor vehicle manufacturer or factory  
21 branch] thereof, who has unfairly, without due regard to the  
22 equities of said dealer and without just provocation, cancelled  
23 the franchise of any [motor vehicle] dealer; or being a  
24 manufacturer, factory branch or importer, who unfairly, without  
25 due regard to the equities of a distributor and without just  
26 provocation cancelled the franchise of any distributor. All  
27 existing dealers' franchises shall continue in full force and  
28 operation under a newly appointed distributor on the termination  
29 of an existing distributor unless a mutual agreement of  
30 cancellation is filed with the board between the newly appointed

1 distributor and such dealer.

2 Not less than sixty days advance notice of such termination,  
3 cancellation or failure to renew shall be given the dealer prior  
4 to the effective date thereof unless the nature or character of  
5 the reason for termination, cancellation or failure to renew is  
6 such that the giving of such notice would not be in the public  
7 interest. At any time before the effective date of such  
8 termination, cancellation or failure to renew, the dealer may  
9 appeal to the board for a hearing on the merits, and following  
10 due notice to all parties concerned, such hearing shall be  
11 promptly held. No such termination, cancellation or failure to  
12 renew shall become effective until final determination of the  
13 issue by the board. In the event of a dealer appeal, the burden  
14 of proof shall be on the manufacturer to show that such  
15 termination, cancellation or failure to renew was for good cause  
16 and in good faith.

17 (xii) Being a [motor vehicle] dealer [having] who has  
18 accepted an order of purchase or a contract from a buyer, which  
19 offer of purchase or contract is subject to subsequent  
20 acceptance by the seller, if such arrangement results in the  
21 practice of bushing. [For the purpose of this section, bushing  
22 is defined as the practice of increasing the selling price of a  
23 car above that originally quoted the purchaser or decreasing the  
24 allowance for trade-in of a used car after the purchaser has  
25 signed a purchase order or contract which is subject to  
26 subsequent acceptance by the seller: Provided, however, That if  
27 a used car is being used as the down payment and it is not to be  
28 delivered to the dealer until the delivery of the new car, the  
29 used car shall be reappraised at that time and such reappraisal  
30 value shall determine the allowance made for such used car.]

1       (xiii) Being a manufacturer, factory branch, distributor,  
2 field representative, officer, agent or any representative  
3 [whatsoever of such manufacturer or factory branch] thereof who,  
4 notwithstanding the terms, provisions or conditions of any  
5 franchise agreement or other writing, prevents a dealer from  
6 changing executive management including the principal officer or  
7 operator of a dealer: Provided, however, That a change in the  
8 principal officer or operator of a dealer [shall] may be  
9 required to have the consent of the manufacturer, but such  
10 consent shall not be unreasonably withheld, and, upon request,  
11 the manufacturer shall state its reasons for refusing to give  
12 such consent. A dealer shall have the right to transfer, sell or  
13 issue shares of common or preferred stock of various classes or  
14 debentures to employees or personnel of the dealership as long as  
15 the basic financial requirements of the manufacturer are  
16 maintained and continued in effect and there is not as a result  
17 thereof in effect, a sale of the franchise without the  
18 manufacturer's or distributor's approval.

19       (xiv) Being a manufacturer, factory branch, distributor,  
20 field representative, officer, agent or any representative  
21 [whatsoever of such manufacturer or factory branch.] thereof:

22       (a) [To induce] Who has induced under threat of  
23 discrimination by the withholding from delivery to dealer  
24 certain models of [motor] vehicles, changing or amending  
25 unilaterally the dealer's allotment of [motor] vehicles out of  
26 the ordinary course of business, in order to induce by such  
27 coercion any dealer to participate or contribute to any local or  
28 national advertising fund controlled directly or indirectly by  
29 the manufacturer or for any other purposes such as contests,  
30 "give aways" or other so-called sales promotional devices and/or



1 change of quotas in any sales contest.

2 (b) Who [fails] has failed, for the protection of the buying  
3 public, to specify the delivery and preparation obligations of  
4 his dealers prior to delivery of new [motor] vehicles to retail  
5 buyers. A copy of the delivery and preparation obligations of  
6 its dealers shall be filed with the board by every licensed  
7 [motor] vehicle manufacturer and shall constitute the dealer's  
8 only responsibility for product liability as between the dealer  
9 and the manufacturer. Any mechanical, body or parts defects  
10 arising from any express or implied warranties of the  
11 manufacturer shall constitute the manufacturer's product or  
12 warranty liability. The manufacturer shall reasonably compensate  
13 any authorized dealer who performs work to rectify the  
14 manufacturer's product or warranty defects or in connection with  
15 delivery and preparation obligations.

16 (xv) Being a used car dealer [as defined in "The Vehicle  
17 Code,"] who advertises or otherwise hold out to the public that  
18 such dealer is selling new motor vehicles.

19 (xvi) Being a used car dealer [as defined in "The Vehicle  
20 Code,"] who sells [motor] vehicles which have never been  
21 registered or titled in Pennsylvania or any other state and on  
22 which a tax for education imposed by the "Tax Reform Code of  
23 1971," has not been paid prior to such sale.

24 (2.1) To bring criminal prosecutions for unauthorized and  
25 unlawful practice.

26 (3) To provide for, regulate and require all persons  
27 licensed in accordance with the provisions of this act to  
28 register biennially with the board; to prescribe the form of  
29 such registration; to require as a condition precedent to such  
30 biennial registration the payment of biennial registration fees

1 as shall be fixed by this act and to issue biennial licenses to  
2 such persons and suspend or revoke the license of such persons  
3 who fail, refuse, or neglect to register within such time as the  
4 board shall prescribe by its rules and regulations.

5 (4) To keep a roster showing the names and addresses of all  
6 licensees licensed under this act, which roster shall be  
7 confidential information, except for official purposes and any  
8 person unlawfully divulging such information shall be guilty of  
9 a misdemeanor, and upon conviction thereof, shall be sentenced  
10 to pay a fine not in excess of one thousand dollars (\$1000) and  
11 costs of prosecution[, or to undergo imprisonment for not more  
12 than one year, or both].

13 (5) To keep minutes and records for all its transactions and  
14 proceedings, and copies thereof, duly certified, which shall be  
15 received in evidence in all courts and elsewhere.

16 (6) To adopt, promulgate and enforce such administrative  
17 rules and regulations not inconsistent with this act as are  
18 deemed necessary and proper by the board to carry into effect  
19 the powers conferred by this act [as set forth in section 2  
20 thereof]. The board shall promote the interests of retail buyers  
21 of [motor] vehicles relating to default, delinquency,  
22 repossession or collection charges and the refund of finance  
23 charges and insurance premiums on prepayment of installment  
24 contracts. The board shall have the power in hearings arising  
25 under this act to determine the place, in this Commonwealth,  
26 where they shall be held; to subpoena witnesses; to take  
27 depositions of witnesses residing without the State, in the  
28 manner provided for in civil actions in courts of record; and to  
29 administer oaths. Whenever a hearing shall be held for the board  
30 by an examiner, he shall report his findings in writing to the

1 board, which shall thereupon make its rulings and orders.

2 [The provisions of this section shall not apply to anyone  
3 licensed previous to the effective date of this act and shall be  
4 applicable only to acts committed after the effective date of  
5 this act.]

6 (7) To consider complaints submitted to it by the Department  
7 of Transportation relating to any violation of Title 75 of the  
8 Pa.C.S. (relating to vehicles) or any regulations promulgated  
9 thereunder insofar as such violation may constitute a wrongful  
10 act of a licensee or person required to be licensed under this  
11 act.

12 Section 2. The act is amended by adding a section to read:

13 Section 5.1. Limitations on Establishing or Relocating  
14 Dealers.--(a) In the event that a manufacturer seeks to enter  
15 into a franchise establishing an additional new motor vehicle  
16 dealer or relocating an existing new motor vehicle dealer within  
17 or into a relevant market area where the same line make is then  
18 represented, the manufacturer shall in writing first notify the  
19 board and each new motor vehicle dealer in such line make in the  
20 relevant market area of the intention to establish an additional  
21 dealer or to relocate an existing dealer within or into that  
22 market area. Within twenty days of receiving such notice or  
23 within twenty days after the end of any appeal procedure  
24 provided by the manufacturer, any such new motor vehicle dealer  
25 may file with the board a protest to the establishing or  
26 relocating of the new motor vehicle dealer. When such a protest  
27 is filed, the board shall inform the manufacturer that a timely  
28 protest has been filed, and that the manufacturer shall not  
29 establish or relocate the proposed new motor vehicle dealer  
30 until the board has held a hearing, nor thereafter, if the board

1 has determined that there is good cause for not permitting the  
2 addition or relocation of such new motor vehicle dealer.

3 (b) This section does not apply:

4 (1) To the relocation of an existing dealer within that  
5 dealer's relevant market area, provided that the relocation not  
6 be at a site within five miles of a licensed new motor vehicle  
7 dealer for the same line-make of motor vehicle;

8 (2) If the proposed new motor vehicle dealer is to be  
9 established at or within two miles of a location at which a  
10 former licensed new motor vehicle dealer for the same line-make  
11 of new motor vehicle had ceased operating within the previous  
12 two years; or

13 (3) To the relocation of an existing dealer to a site that  
14 is further away from the nearest dealer of the same line-make.

15 (c) In determining whether good cause has been established  
16 for not entering into or relocating an additional new motor  
17 vehicle dealer for the same line-make, the board shall take into  
18 consideration the existing circumstances, including, but not  
19 limited to:

20 (1) Permanency of the investment of both the existing and  
21 proposed new motor vehicle dealers.

22 (2) Growth or decline in population and new car  
23 registrations in the relevant market area.

24 (3) Effect on the consuming public in the relevant market  
25 area.

26 (4) Whether it is injurious or beneficial to the public  
27 welfare for an additional new motor vehicle dealer to be  
28 established.

29 (5) Whether the new motor vehicle dealers of the same line-  
30 make in that relevant market area are providing adequate

competition and convenient customer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel.

(6) Whether the establishment of an additional new motor vehicle dealer would increase competition, and therefore be in the public interest.

(7) The effect the denial of relocation will have on a relocating dealer.

(d) The board must conduct the hearing and render its final determination within one hundred twenty days after a protest is filed. Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated new motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.

(e) Any parties to a hearing by the board concerning the establishing or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to 2 Pa.C.S. § 701 (relating to scope of subchapter).

Section 3. Section 6 of the act, repealed insofar as inconsistent July 1, 1978 (P.L.700, No.124), is amended to read:

Section 6. Fees.--The fee for an applicant for licensure shall be:

(1) For [motor vehicle] salesmen, fifteen dollars (\$15) for the initial registration, and ten dollars (\$10) for each biennial renewal thereof.

1       (2) For [motor vehicle] dealers, twenty-five dollars (\$25)  
2 for the initial registration, and fifteen dollars (\$15) for each  
3 biennial renewal thereof. Each office or branch shall be  
4 separately licensed and shall pay the same fees. Each used car  
5 lot not immediately adjacent to the licensed premises shall be  
6 issued a supplemental license for which a biennial fee of ten  
7 dollars (\$10) shall be charged.

8       (3) For manufacturers, distributors or wholesalers, same as  
9 for dealers.

10       (4) For factory representative, or distributor branch  
11 representative, same as for salesmen.

12       (5) Manufacturers, wholesalers and distributors may operate  
13 as a [motor vehicle] dealer without any additional fee or  
14 license.

15       Section 4. Sections 7 and 8 of the act are amended to read:

16       Section 7. Application for License.--[(a)] Application for  
17 license as a [motor vehicle] dealer shall be made in writing to  
18 the board, signed by the applicant, setting forth the following:

19       (1) Name of applicant and location of principal place of  
20 business.

21       (2) Name or style under which business is to be conducted  
22 and, if a corporation, the state of incorporation.

23       (3) Name and address of each owner or partner and, if a  
24 corporation, the names of principal officers and directors.

25       (4) The locations in which the business is to be conducted  
26 if the dealer has more than one place of business.

27       (5) If new [motor] vehicles are to be sold, the make or  
28 makes to be handled.

29       (6) A statement of the previous history, record, and  
30 association of the applicant and of each owner, partner,

1 officer, and director, which statement shall be sufficient to  
2 establish to the satisfaction of the board the reputation in  
3 business of the applicant.

4 (7) A statement showing whether the applicant has previously  
5 applied for a license and the result of such application, and  
6 whether the applicant has ever been the holder of either a  
7 dealer's or salesman's license which was revoked or suspended.

8 (8) If the applicant is a corporation or copartnership, a  
9 statement showing whether any of the partners, employees,  
10 officers, or directors have been refused a dealer's or  
11 salesman's license or have been the holder of such license which  
12 was revoked or suspended.

13 [(b)] (9) Application for license as a [motor vehicle]  
14 salesman shall be made in writing to the board, signed by the  
15 applicant, setting forth the period of time, if any, during  
16 which he has been engaged in the occupation of [motor vehicle]  
17 salesman, the name of his last employer and the name and place  
18 of business of the [motor vehicle] dealer [or mobilehome dealer]  
19 then employing him or into whose employ he is then about to  
20 enter. All applications shall be made upon a form of application  
21 prepared by the board which shall include the recommendation of  
22 his employer or prospective employer certifying that the  
23 applicant is honest, trustworthy, truthful and of good repute  
24 and recommending that a license be granted. In the case of an  
25 applicant who is himself a [motor vehicle or mobilehome] dealer,  
26 an officer of a corporation which is a [motor vehicle or  
27 mobilehome] dealer, or a member of a partnership which is a  
28 [motor vehicle or mobilehome] dealer, the foregoing  
29 recommendation shall be made by another [motor vehicle or  
30 mobilehome] dealer, bank or sales finance company which has

1 personal knowledge concerning the reputation and fitness of the  
2 applicant. The [form of] application shall contain such other  
3 information as the board shall require.

4 [(c)] (10) Application for license other than as a [motor  
5 vehicle] dealer or salesman shall be made in writing to the  
6 board accompanied by the required fee. The board may require in  
7 such application or otherwise, information relating to the  
8 applicant's solvency, his financial standing or other pertinent  
9 matter commensurate with the safeguarding of the public  
10 interest, all of which may be considered by the board in  
11 determining the fitness of said applicant to engage in the  
12 business for which he desires to be licensed.

13 Section 8. [Registration.--All applicants for a license as a  
14 salesman shall be issued a license upon the recommendation  
15 provided for in section 7 of this act. Provided, however, that  
16 the] Refusal of License.--The board may refuse to issue [such] a  
17 license if the applicant has committed any of the acts set forth  
18 in section 5 of this act as grounds for the suspension or  
19 revocation of a [motor vehicle salesman's license or  
20 manufacturer's license: And, provided further, That applicants  
21 for a motor vehicle dealer's license shall be issued a license  
22 if they are a new car dealer, or a used car dealer, as those  
23 terms are defined in section 102 of "The Vehicle Code" and are  
24 registered with the Bureau of Motor Vehicles in the "Dealer's  
25 Class" under section 409 of "The Vehicle Code"] license.

26 Section 5. Section 9 of the act, repealed insofar as  
27 inconsistent July 1, 1978 (P.L.700, No.124), is amended to read:

28 Section 9. Change of Salesman's License to Indicate New  
29 Employer.--[A motor vehicle salesman shall be licensed as a  
30 salesman for only one motor vehicle dealer at any one time.] If



1 a person holding a currently valid [motor vehicle] salesman's  
2 license, desires to be licensed as a salesman of another  
3 employer, he shall make application to the board for the  
4 issuance of a new license showing the name of his proposed new  
5 employer. Such application shall be made on a form of  
6 application prescribed by the board and shall include the  
7 recommendation of his proposed new employer similar to the  
8 requirement of section 7 of this act. The new license shall be  
9 issued for the remainder of the period covered by his previous  
10 license. The fee for the issuance of such changed license shall  
11 be five dollars (\$5).

12 Section 6. Sections 10, 11 and 12 of the act are amended to  
13 read:

14 Section 10. Exemption from Licensure and Registration.--This  
15 act shall not be construed to require licensure and registration  
16 in the following cases:

17 (1) Public officers in the conduct of sales of [motor]  
18 vehicles in the performance of their official duties.

19 (2) Sales finance companies and banks licensed under the  
20 provisions of the act of June 28, 1947 (P.L.1110, No.476), known  
21 as the "Motor Vehicle Sales Finance Act" in the conduct of sales  
22 of [motor] vehicles which have been repossessed by them.

23 (3) Fleet owners, as defined in ["The Vehicle Code"] Title  
24 75 Pa.C.S. § 101 (relating to definitions) in the conduct of  
25 sales of [motor] vehicles owned by them and used in their  
26 business.

27 Section 11. Actions of the Board.--All actions of the board  
28 pursuant to this act which result in a refusal to issue a  
29 license or [action which suspends or revokes] suspension or  
30 revocation of a license shall be subject to the right of notice

1 of hearing and adjudication and the right of appeal therefrom in  
2 accordance with [the act of June 4, 1945 (P.L.1388, No.442),]  
3 Subchapter A of Chapter 5 and Subchapter A of Chapter 7 of Title  
4 2 of the Pennsylvania Consolidated Statutes, known as the  
5 "Administrative Agency Law."

6 Section 12. Penalties.--[Whoever engages in the occupation  
7 of motor vehicle salesman or in the business of a motor vehicle  
8 dealer, manufacturer, factory branch, distributor, distributor  
9 branch, factory or distributor representative without being  
10 licensed and registered as required by this act or exempted  
11 therefrom as provided in this act, or shall present or attempt  
12 to use as his own the license of another or shall give any false  
13 or forged evidence of any kind to the board or to any member  
14 thereof in order to obtain a license, or shall use any expired,  
15 suspended or revoked license, or shall otherwise violate the  
16 provisions of this act shall be guilty of a misdemeanor and upon  
17 conviction thereof shall be sentenced to pay a fine not  
18 exceeding one hundred dollars (\$100) or undergo imprisonment for  
19 a period of not more than ninety days, or both, in the case of a  
20 person engaging in the occupation of motor vehicle salesman  
21 without being licensed as such, and a fine not exceeding five  
22 hundred dollars (\$500) or undergo imprisonment for a period of  
23 not more than ninety days, or both, in the case of a person  
24 engaging in the business of motor vehicle dealer, manufacturer,  
25 factory branch, distributor, distributor branch, factory or  
26 distributor representative without being licensed as such.]  
27 Whoever engages in the occupation of vehicle salesman or who  
28 sells or acts as salesman or sales agent in connection with the  
29 sale of a mobilehome in a mobilehome park, as provided in  
30 section 4 of this act, without being licensed and registered as

1 required by this act or exempted from as provided in this act,  
2 or shall present or attempt to use as his own the license of  
3 another or shall give any false or forged evidence of any kind  
4 to the board or to any member thereof in order to obtain a  
5 license, or shall otherwise violate the provisions of this act  
6 shall be guilty of a summary offense and upon conviction thereof  
7 shall be sentenced to pay a fine of one hundred dollars (\$100).

8 Whoever engages in the business of vehicle dealer,  
9 manufacturer, factory branch, distributor, distributor branch,  
10 factory or distributor representative without being licensed and  
11 registered as required by this act or exempted from as provided  
12 in this act, or shall present or attempt to use as his own the  
13 license of another or shall give any false or forged evidence of  
14 any kind to the board or to any member thereof in order to  
15 obtain a license, or shall use any expired, suspended or revoked  
16 license, or shall otherwise violate the provisions of this act,  
17 shall be guilty of a summary offense and upon conviction thereof  
18 shall be sentenced to pay a fine of two hundred dollars (\$200).

19 In the case of a second violation of this act by either  
20 vehicle salesman, or those in the business of vehicle dealer,  
21 manufacturer, factory branch, distributor, distributor branch,  
22 factory or distributor representative, such person shall be  
23 guilty of a summary offense and upon conviction thereof shall be  
24 sentenced to pay a fine of three hundred dollars (\$300).

25 Any third or subsequent offense shall be a misdemeanor of the  
26 third degree and upon conviction thereof, the violator shall be  
27 sentenced to pay a fine of not less than one thousand dollars  
28 (\$1,000).

29 Section 7. Section 12.1 of the act, added December 21, 1973  
30 (P.L.408, No.144), is amended to read:

1       Section [12.1] 13. Civil Damages.--Any licensee suffering  
2       pecuniary loss because of a violation by any other licensee of  
3       subclauses (xi) and (xiii) of clause (2) of section 5 or because  
4       of any unfair practice found by the board may recover damages  
5       therefor in any court of competent jurisdiction in an amount  
6       equal to the pecuniary loss together with costs including a  
7       reasonable attorney's fee.

8       Section 8. The act is amended by adding a section to read:

9       Section 14. Rules and Regulations.--The department shall  
10      have the power, in accordance with the provisions of the act of  
11      July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth  
12      Documents Law, to promulgate, consistent with and in furtherance  
13      of this act, rules and regulations in accordance with which the  
14      board shall carry out its responsibilities and duties under this  
15      act.

16      Section 9. Sections 13, 14, 15 and 16 of the act are amended  
17      to read:

18      Section [13] 15. Appropriation.--All fees and fines  
19      collected under the provisions of this act shall be paid into  
20      the State Treasury for the use of the Commonwealth.

21      Section [14] 16. Saving Provision.--This act shall not be  
22      deemed to repeal, suspend, modify or revoke any of the  
23      provisions of "The Vehicle Code" or the "Motor Vehicle Sales  
24      Finance Act."

25      Section [15] 17. Severability.--The provisions of this act  
26      are severable and, if any provision or part hereof shall be held  
27      invalid or unconstitutional or inapplicable to any person or  
28      circumstances, such invalidity, unconstitutionality or  
29      inapplicability shall not affect or impair the remaining  
30      provisions of the act. It is hereby declared to be the

1 legislative intent that this act would have been adopted if such  
2 invalid, unconstitutional or inapplicable provisions had not  
3 been included therein.

4 Section [16] 18. Effective Date.--This act shall take effect  
5 immediately.

6 Section 10. This act shall take effect immediately except  
7 that the provisions requiring a bond shall take effect April 1,  
8 1982.