

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

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

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

7 "Board" means the State Board of Vehicle Manufacturers,
8 Dealers and Salesmen, which shall consist of twelve persons to
9 be appointed by the Governor with the advice and consent of the
10 Senate within ninety days, which shall aid and assist in the
11 administration of this act. The members of the board shall be
12 residents of Pennsylvania. The Commissioner of Professional and
13 Occupational Affairs and the Secretary of the Department of
14 Transportation or his designee shall be ex officio members of
15 the said board. Three members of the board shall be new car
16 dealers, as defined herein, who have been actively engaged as
17 such for a period of at least five years immediately preceding
18 their appointment. Two members of the board shall be used car
19 dealers, as defined herein, who have been actively engaged as
20 such for a period of at least five years immediately preceding
21 their appointment. Three members shall be mobilehome dealers as
22 defined herein, who have been actively engaged as such for a
23 period of at least five years preceding their appointment. The
24 mobilehome dealer member currently a member of the board shall
25 serve until the expiration of his current term, or until his
26 successor shall be appointed. The two mobilehome dealer members
27 initially appointed under this amendatory act shall be appointed
28 for initially staggered terms, one to be appointed for a term of
29 one year and one to be appointed for a term of two years;
30 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

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

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

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

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

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

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

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

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

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

28 "Good faith" means honesty in fact and the observation of
29 reasonable commercial standards of fair dealing in the trade as
30 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 employes 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

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

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

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

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

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

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

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

28 (1) For [motor vehicle] salesmen, fifteen dollars (\$15) for
29 the initial registration, and ten dollars (\$10) for each
30 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, employes,
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.