

BOARD OF VEHICLES ACT - UNLAWFUL ACTS BY MANUFACTURERS OR  
DISTRIBUTORS

Act of Oct. 27, 2010, P.L. 958, No. 100

Cl. 63

Session of 2010

No. 2010-100

SB 1328

AN ACT

Amending the act of December 22, 1983 (P.L.306, No.84), entitled "An act providing for the State Board of Vehicle Manufacturers, Dealers and Salespersons; and providing penalties," further providing for definitions and for unlawful acts by manufacturers or distributors.

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

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

Section 2. Definitions.

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

\* \* \*

**"Site-control agreement" or "exclusive use agreement." An agreement that, regardless of its name, title, form or the parties entering into it, has the effect of:**

**(1) controlling the use and development of the premises of a dealer's franchise or facility;**

**(2) requiring a dealer to establish or maintain an exclusive dealership facility on the premises of the dealer's franchise or facility;**

**(3) restricting the power or authority of the dealer or the lessor if the dealer leases the dealership premises to transfer, sell, lease, develop, redevelop or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase or lease or any similar arrangement; or**

**(4) establishing a valuation process or formula for the dealership premises that does not allow for the dealership premises to be transferred, sold or leased by the dealer at the highest and best use valuation for the dealership premises.**

\* \* \*

Section 2. Section 12(a) and (b) of the act are amended by adding paragraphs to read:

Section 12. Unlawful acts by manufacturers or distributors.

(a) Unlawful coercive acts.--It shall be a violation for any manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such manufacturer, factory branch or distributor licensed under this act to require, attempt to require, coerce or attempt to coerce any new vehicle dealer in this Commonwealth to:

\* \* \*

**(10) (i) Sell, offer to sell or sell exclusively an extended service contract, extended maintenance plan or similar product, such as gap products, offered, endorsed or sponsored by the manufacturer or distributor by the following means:**

(A) By an act or statement that the manufacturer or distributor will in any manner impact the dealer, whether it is express or implied or made directly or indirectly.

(B) By a contract, or an express or implied offer of contract, made to the dealer on the condition that the dealer shall sell, offer to sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor.

(C) By measuring the dealer's performance under the franchise based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor.

(D) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor.

(ii) Nothing in this paragraph shall prohibit a manufacturer or distributor from providing incentive programs to a new vehicle dealer who makes the voluntary decision to offer to sell, sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor.

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

\* \* \*

(19) Directly or indirectly condition any of the following actions on a dealer, prospective dealer or owner of an interest in a dealership franchise or facility to enter into a site-control agreement or exclusive use agreement:

- (i) awarding of a franchise to a prospective dealer;
- (ii) adding of a line-make or franchise to an existing dealer's franchise or facility;
- (iii) renewing of an existing dealer's franchise;
- (iv) approving of the relocation of an existing dealer's franchise or facility; or
- (v) approving of the sale or transfer of a dealer's ownership of a franchise or facility.

Nothing in this paragraph prohibits a dealer, prospective dealer or owner of an interest in a dealership franchise or facility from voluntarily entering into such an agreement for other consideration. However, a provision contained in an agreement which is not voluntarily entered into by a dealer, prospective dealer or owner of an interest in a dealership franchise or facility on or after the effective date of this paragraph that is inconsistent with the provisions of this section shall be a violation of this act.

\* \* \*

Section 3. This act shall take effect in 60 days.

APPROVED--The 27th day of October, A.D. 2010.

EDWARD G. RENDELL