

BOARD OF VEHICLES ACT - OMNIBUS AMENDMENTS

Act of Dec. 20, 1991, P.L. 387, No. 41

Cl. 63

Session of 1991

No. 1991-41

SB 263

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 mobile home parks; repealing provisions relating to attorney fees; further defining "off-premise sale" and "relevant market area"; authorizing injunctions; and further providing for cancellation.

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

Section 1. The definitions of "off-premise sale" and "relevant market area" in section 2 of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act, are amended 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:

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"Off-premise sale." A sale for a fixed and limited period of time held in the [normal marketing] **relevant market** area of the participating dealer or dealers, which is conducted for the purpose of exhibiting and selling vehicles at a geographical location not normally used as a dealership.

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"Relevant market area." The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new vehicle dealer, the relevant market area shall be in all instances, except for cities of the first and second class which will be the area within a five-mile radius, the area within a radius of ten miles around the proposed site[.] **of the additional new vehicle dealer and, where a manufacturer is seeking to relocate an existing dealer, the relevant market area is the area within a radius of 20 miles around the proposed site of the relocating dealer or the area of responsibility defined in the franchise of the relocating dealer, whichever is greater.** Relevant market area shall not apply to mobile home or recreational vehicle dealer or manufacturer agreements.

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Section 2. Sections 4(5) and 5(b) of the act are amended to read:

Section 4. Powers and duties of board.

The board shall have the power and its duty shall be to:

* * *

(5) Bring criminal prosecutions for unauthorized, unlicensed or unlawful practice[.] **and bring an action to enjoin such practices.**

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Section 5. License to engage in business.

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(b) Mobile home parks.--

(1) It shall be unlawful for any person, for a commission, compensation or other consideration, to sell or act as salesperson, broker or sales agent in connection with the sale of one or more mobile homes located in a mobile home park, as provided for in section 11 of the act of November 24, 1976 (P.L.1176, No.261), known as the Mobile Home Park Rights Act, unless such person shall be licensed under this act[.], **except as provided for in paragraph (2).**

(2) (i) Any real estate salesperson or broker licensed under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, may list for sale any preowned mobile home as defined by the Mobile Home Park Rights Act, whether or not the mobile home is located in a mobile home park, without being licensed under the provisions of this act. No mobile home park rule shall prevent the placement of a "for sale" sign on the home and on the property on which the home is located.

(ii) Nothing in this paragraph shall authorize the listing for sale of preowned mobile homes at a sales lot by a licensed real estate salesperson or broker unless the salesperson or broker is also licensed under this act.

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Section 3. Section 7 of the act is amended by adding a paragraph to read:

Section 7. Enforcement.

The enforcement of the laws and rules and regulations governing practice under this act is primarily vested in the board with the following additional powers and duties to:

* * *

(7) Obtain injunctions from a court of competent jurisdiction against persons acting in violation of this act.

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Section 4. Section 9(c) of the act, amended June 8, 1984 (P.L.380, No.78), is amended to read:

Section 9. Unlawful acts by manufacturers, factory branches, distributors, field representatives, officers, agents or any representatives of manufacturers, factory branches or distributors.

* * *

(c) Canceling of franchises.--It shall be a violation of this act for any manufacturer, [factory branch,] distributor, [field representative,] officer, agent or any representative whatsoever of a vehicle manufacturer [or factory branch] to unfairly, without due regard to the equities of said dealer and without just provocation, cancel the franchise of any vehicle dealer; or being a manufacturer[, factory branch] or importer, to unfairly, without due regard to the equities of a distributor and without just provocation cancel the franchise of any distributor. All existing dealers' franchises shall continue in full force and operation under a newly appointed distributor on the termination of an existing distributor unless a mutual agreement of cancellation is filed with the board between the newly appointed distributor and such dealer. Not less than 60 days advance notice of such termination, cancellation or failure to renew shall be given the dealer or distributor prior to the

effective date thereof unless the nature or character of the reason for termination, cancellation or failure to renew is such that the giving of such notice would not be in the public interest. At any time before the effective date of such termination, cancellation or failure to renew, the dealer or distributor may appeal to the board for a hearing on the merits, and following due notice to all parties concerned, such hearing shall be promptly held. No such termination, cancellation or failure to renew shall become effective until final determination of the issue by the board. In the event of a dealer or distributor appeal **of the termination, cancellation or failure to renew of its franchise**, the burden of proof shall be on the manufacturer or importer to show that such termination, cancellation or failure to renew was [for good cause and in good faith.] **based on the dealer's failure to comply substantially with the reasonable and material requirements of the franchise.** The manufacturer shall not meet its burden of proof to terminate, cancel or fail to renew the franchise if the acts of the manufacturer, in whole or in significant part, caused the dealer to be unable to comply substantially with the reasonable and material requirements of the franchise. Any termination, cancellation or failure to renew which is subject to section 9.1 shall not be subject to this subsection.

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Section 5. The act is amended by adding a section to read:
Section 9.1. Industry reorganization.

(a) **Violation.--**

(1) It shall be a violation of this act for a manufacturer or distributor directly or indirectly or through any officer, agent or employee (hereinafter collectively referred to as "the franchisor" for this section) to terminate, cancel or fail to renew a franchise of a dealer in connection with:

(i) any change in ownership or control of all or any part of the franchisor's business whether by sale or transfer of assets, corporate stock or other equity interest; assignment; merger; consolidation; combination; joint venture; redemption; operation of law; or otherwise; or

(ii) the termination, suspension or cessation of all or any part of the franchisor's business operations except for a termination of a part of the franchisor's business operations throughout the United States that is not otherwise part of any change in ownership or control of the franchisor's business.

(2) Paragraph (1) shall not apply if:

(i) a manufacturer offers a dealer a replacement franchise with reasonable terms or conditions; or

(ii) the franchisor, within 90 days of the effective date of the termination, cancellation or failure to renew, compensates the dealer in an amount at least equivalent to the higher of the fair market value of the franchise or portion of the franchise terminated, canceled or failed to be renewed on the date the franchisor announces the act that results in the termination, cancellation or nonrenewal of the franchise or the date on which the notice of termination, cancellation or nonrenewal of the franchise is issued.

(3) If the franchisor either or both:

(i) authorizes the dealer to continue servicing and supplying parts, including warranty service and parts, for any goods or services marketed by the dealer pursuant to the franchise for a period of not less than five years from the effective date of the termination, cancellation or failure to renew and continues to reimburse the dealer for warranty parts and service at the same prices and terms as franchised dealers for the manufacturer or distributor;

(ii) continues to supply the dealer with replacement parts for any goods or services marketed by the dealer pursuant to the franchise for a period of not less than five years from the effective date of the termination, cancellation or failure to renew at the same prices and terms as franchised dealers for the manufacturer or distributor;

and if a dealer chooses to continue either or both such parts and service operation under subparagraph (i) or (ii), the fair market value compensation of the franchise shall be reduced to reflect the value of continuing either or both such parts and service operation.

(b) Acts affecting franchise.--For purposes of subsection (a), the termination, cancellation or discontinuation of a series, line, brand or class of new motor vehicle marketed by a franchisor as a distinct series, line, brand or class shall be deemed to be the termination, cancellation or nonrenewal of a franchise even if said series, line, brand or class of new motor vehicle is part of a franchise including other series, lines, brands or classes of new motor vehicle, provided that nothing in this subsection shall be construed as prohibiting a franchisor from changing, adding or deleting models, specifications, model names, numbers or identifying marks or similar characteristics of the new motor vehicles it markets, provided that such change, addition or deletion does not result in the termination, cancellation or discontinuance of a distinct series, line, brand or class of new motor vehicle.

(c) Disputes.--Any dispute arising between a franchisor and a dealer under this section involving the determination of the fair market valuation of a franchise shall be determined by a court of competent jurisdiction and not by the board.

(d) Definition.--As used in this section, the term "franchisor" means a manufacturer or distributor.

Section 6. Section 10 of the act is amended by adding paragraphs to read:

Section 10. Grounds for disciplinary proceedings.

The board shall have the power to formally reprimand, suspend or revoke any license or refuse to issue or renew any license of an applicant or licensee or a person required to be licensed under this act, if after due notice of and hearing, the person charged is found in violation of or fails to carry out the acts and procedures set forth in sections 5 and 8 or is found guilty of committing or attempting to commit any of the acts set forth in section 13 or any of the following acts:

* * *

(27) Being a curb-stoner or engaging in the business of a dealer without a license.

(28) Any violation of the regulations promulgated by the board.

(29) Being an auction which knowingly permits dealers who are not currently licensed in this Commonwealth or any other state or who during the time their licenses are suspended or revoked by the Commonwealth or any other state to sell, represent or purchase vehicles at an auction.

(30) Being a dealer which permits salespersons who are not currently licensed in this Commonwealth or any other state or who during the time their licenses are suspended or revoked by the Commonwealth or any other state to sell, represent or purchase vehicles at an auction.

Section 7. Section 20(c) of the act is amended to read:
Section 20. Civil actions for violations.

* * *

[(c) Attorney's fees.--In any action the prevailing party may be awarded a reasonable attorney's fee and costs at the court's discretion.]

Section 8. Section 23.1 of the act is amended by adding subsections to read:

Section 23.1. Vehicle shows, off-premise sales and exhibitions.

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(c) Out-of-State new vehicle dealers.--A new vehicle dealer, except a recreational vehicle dealer, licensed in another state may participate in industrywide public vehicle shows and exhibitions in which 50 or more new vehicle dealers participate as exhibitors with permission of their licensed manufacturer. Furthermore, the limitations relating to relevant market area contained in subsection (a) shall not be applicable to industrywide public vehicle shows and exhibitions in which 50 or more new vehicle dealers participate as exhibitors with permission of their licensed manufacturer.

(d) Out-of-State recreational vehicle dealers.--

(1) A recreational vehicle dealer licensed in another state may participate in vehicle shows or exhibits with recreational vehicles within this Commonwealth in which less than 50 dealers participate as exhibitors with permission of the dealer's licensed manufacturer if all of the following conditions exist:

(i) The show has a minimum of ten recreational vehicle dealers licensed in this Commonwealth.

(ii) More than 50% of the participating recreational vehicle dealers are licensed in this Commonwealth.

(iii) The state in which the recreational vehicle dealer is licensed is a state contiguous to this Commonwealth and that state permits Commonwealth-licensed recreational vehicle dealers to participate in vehicle shows in the state under conditions substantially equivalent to the conditions which are imposed upon dealers from that state who participate in recreational vehicle shows in this Commonwealth.

(2) A recreational vehicle dealer licensed in another state may participate in a vehicle show or exhibit which has, when it opens to the public, at least 50 dealers from both this Commonwealth and outside this Commonwealth manning recreational vehicle manufacturer displays if the show or exhibit is trade-oriented and is predominantly funded by recreational vehicle manufacturers. All of the participating dealers who are not from this Commonwealth must be from a state contiguous to this Commonwealth and must be duly licensed and authorized by their state of residence to sell recreational vehicles.

Section 9. This act shall take effect as follows:

(1) The addition of section 23.1(c) and (d) of the act shall take effect immediately.

(2) The remainder of this act shall take effect in 60 days.

APPROVED--The 20th day of December, A. D. 1991.

ROBERT P. CASEY