
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1454 Session of
1983

INTRODUCED BY HUTCHINSON, DININNI AND LETTERMAN, SEPTEMBER 20,
1983

REFERRED TO COMMITTEE ON TRANSPORTATION, SEPTEMBER 20, 1983

AN ACT

1 Providing for the State Board of Motor Vehicle Manufacturers,
2 Dealers and Salespersons.

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

22 Section 1. Short title.

23 This act shall be known and may be cited as the Board of
24 Motor Vehicles Act.

25 Section 2. Definitions.

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

29 "Agreement." A contract or franchise or any other written
30 instrument which describes the contractual relationship between

1 a manufacturer, distributor, importer or dealer and at least one
2 other person.

3 "Board." The State Board of Motor Vehicle Manufacturers,
4 Dealers and Salespersons.

5 "Branch lot." An office and lot maintained in addition to
6 the main office and lot of a licensed vehicle dealer. The branch
7 lot shall meet the facility requirements defined herein and by
8 regulations as a main lot, unless used solely for the storage of
9 motor vehicles.

10 "Broker." Any person who, for a commission, compensation or
11 other valuable consideration, engages or participates in the
12 wholesale or retail sale in one calendar year of five or more
13 used vehicles or any new vehicle as the agent for the buyer or
14 seller. For the purposes of this definition, the broker need not
15 have custody or control of the subject vehicle but shall have
16 the authority of the buyer or seller to negotiate or conduct a
17 transaction on behalf of the buyer or seller. This definition
18 shall specifically include car auctions.

19 "Bushing." The practice of increasing the selling price of a
20 motor vehicle above that originally quoted the purchaser or
21 decreasing the allowance for trade-in of a used motor vehicle
22 after the purchaser has signed a purchase order or contract
23 which is subject to subsequent acceptance by the seller. If a
24 used motor vehicle is being used as the down payment and it is
25 not to be delivered to the dealer until delivery of the new
26 motor vehicle, the used motor vehicle may be reappraised at that
27 time if the dealer can establish that the vehicle has suffered
28 damage or serious mechanical deterioration since date of
29 original valuation. Reappraisal value may determine the
30 allowance made for such used car.

1 "Curb-stoner or unlicensed salesperson." Any person who, for
2 a commission, compensation or other valuable consideration, and
3 without being licensed in accordance with this act as a
4 salesperson, engages in the wholesale or retail sale, exchange
5 or purchase in one calendar year of five or more used vehicles
6 or any new vehicle.

7 "Dealer." All of the following:

8 (1) A person engaged in and devoting a substantial
9 portion of time to the business of buying, selling or
10 exchanging new and used motor vehicles, trailers or
11 semitrailers on commission, compensation or other
12 consideration, who maintains a salesroom or garage devoted
13 principally to the motor vehicle business and an established
14 place of business and who holds a written contract with a
15 manufacturer, importer or distributor, giving such person
16 selling rights for new motor vehicles, trailers or
17 semitrailers or who is an importer or distributor of new
18 motor vehicles, trailers or semitrailers who holds a contract
19 in writing with a manufacturer of motor vehicles, trailers
20 and semitrailers.

21 (2) A person engaged in and devoting a substantial
22 portion of time to the business of buying, selling or
23 exchanging used motor vehicles, tractors, trailers or
24 semitrailers on commission, compensation or other
25 consideration who maintains an established place of business,
26 which includes at least a two-bay garage equipped to perform
27 the usual and normal repair and servicing of motor vehicles,
28 or by written contract which has available at all times such
29 repair or servicing facilities or a combination thereof and
30 upon which or adjacent thereto is a building or portion of a

1 building, owned or rented by such person, where books and
2 records are kept. The term includes fleet owners who engage
3 directly in the retail sale of fleet vehicles.

4 (3) A person engaged in and devoting a substantial
5 portion of time to the business of buying, selling or
6 exchanging mobile homes, house trailers or office trailers on
7 commission, compensation or other consideration, who
8 maintains a minimum display area of 5,000 square feet devoted
9 principally to the mobile home, house trailer or office
10 trailer business, who maintains an established place of
11 business and who holds a contract in writing with a
12 manufacturer giving such person selling rights for new mobile
13 homes, house trailers or office trailers.

14 (4) A person engaged in and devoting a substantial
15 portion of time to the business of buying, selling or
16 exchanging used mobile homes, house trailers or office
17 trailers on commission, compensation or other consideration,
18 who maintains a minimum display area of 5,000 square feet,
19 and upon which or adjacent thereto is a building or a portion
20 of a building, owned or rented by such person, where books
21 and records are kept.

22 (5) A person engaged in and devoting a substantial
23 portion of time to the business of buying, selling or
24 exchanging new and used recreational vehicles on commission
25 or otherwise and who maintains an established place of
26 business and a minimum useable display area of 5,000 square
27 feet devoted principally to the recreational vehicle
28 business.

29 (6) A person engaged in and devoting a substantial
30 portion of his time to the business of buying, selling or

1 exchanging used recreational vehicles on commission or
2 otherwise and who maintains an established place of business
3 and a minimum useable display area of 5,000 square feet
4 devoted principally to the recreational vehicle business.

5 "Department." The Department of State acting through the
6 Commissioner of Professional and Occupational Affairs.

7 "Distributor." A person, resident or nonresident, who sells
8 or distributes vehicles to dealers or who maintains distributor
9 representatives.

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

12 "Distributor representative." A representative similarly
13 employed by a distributor, distributor branch or wholesaler.

14 "Established place of business." A permanent, enclosed
15 building as more specifically defined by regulation which is
16 accessible and open to the public at all reasonable times and at
17 which the business of a new or used vehicle dealer, including
18 the display and repair of vehicles, may be lawfully conducted in
19 accordance with the terms of applicable building codes, zoning
20 and other land-use regulatory ordinances.

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

25 "Factory representative." A representative employed by a
26 manufacturer or by factory branch for the purpose of making or
27 promoting the sale of its vehicles or for supervising or
28 contacting its dealers or prospective dealers.

29 "Fleet owner." Any person who owns a group of 15 or more
30 vehicles.

1 "Franchise." The written agreement or contract between any
2 new vehicle manufacturer and any new vehicle dealer which
3 purports to fix the legal rights and liabilities of the parties
4 to such agreement or contract, and pursuant to which the dealer
5 purchases and resells the franchise product or leases or rents
6 the dealership premises.

7 "Manufacturer." Any person, resident or nonresident, who
8 manufactures or assembles vehicles or who manufactures or
9 installs on previously assembled chassis special bodies or
10 equipment which when installed form an integral part of a
11 vehicle and which constitute a major manufacturing alteration.

12 "Motorcycle." A motor vehicle having a seat or saddle for
13 the use of the rider and designed to travel on not more than
14 three wheels in contact with the ground.

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

20 "Person." Any individual, corporation, partnership,
21 association or other entity foreign or domestic.

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

28 "Retail sale" or "sale at retail." The act or attempted act
29 of selling, bartering, exchanging or otherwise disposing of a
30 vehicle to an ultimate purchaser.

1 "Salesperson." Any person who, for a commission,
2 compensation or other valuable consideration, is employed as a
3 salesperson by a dealer to sell vehicles at retail. Any
4 salesperson licensed hereunder shall be licensed to sell only
5 for one dealer at a time and his license shall indicate the name
6 of that dealer. The term includes the principal, an officer or a
7 partner of a dealer if he personally is actively engaged in the
8 retail sale of vehicles.

9 "Vehicle." Every device which is or may be moved or drawn
10 upon a highway, except devices moved by human or animal power,
11 those used exclusively upon rails or tracks or motorized
12 pedalcycles.

13 "Wholesaler." A person, resident or nonresident, who is in
14 the business of buying, selling or exchanging vehicles to
15 dealers.

16 Section 3. State Board of Motor Vehicle Manufacturers, Dealers
17 and Salespersons.

18 (a) Board.--The State Board of Motor Vehicle Manufacturers,
19 Dealers and Salespersons shall consist of 15 members, one of
20 whom shall be the Commissioner of Professional and Occupational
21 Affairs, one of whom shall be the Secretary of the Department of
22 Transportation, or his designee, who shall be ex-officio members
23 of said board, and the remaining 13 of whom shall be appointed
24 by the Governor as follows:

25 (1) Three members shall be new car dealers who have been
26 actively engaged as such for a period of five years
27 immediately preceding their appointment.

28 (2) Three members shall be used car dealers who have
29 been actively engaged as such for a period of five years
30 immediately preceding their appointment.

1 (3) One shall be a mobile home dealer who has been
2 actively engaged as such for a period of five years
3 immediately preceding appointment.

4 (4) One shall be a salesperson who has been actively
5 engaged in the sale of new or used vehicles for a period of
6 five years immediately preceding appointment. The member
7 shall not be a dealer or an officer of a corporation or a
8 member of a partnership engaged in the business of a dealer
9 at the time of appointment.

10 (5) One shall be a recreational dealer who has been
11 actively engaged as such for a period of five years
12 immediately preceding appointment.

13 (6) One shall be a motorcycle dealer who has been
14 actively engaged as such for a period of five years
15 immediately preceding appointment.

16 (7) Three shall be members of the general public having
17 no connection with the vehicle business, particularly
18 repairing or financing of motor vehicles.

19 (b) Terms of members.--The terms of the members of the board
20 shall be three years from the respective date of their
21 appointment, provided that a member may continue for a period
22 not to exceed six months beyond the expiration of his term if a
23 successor has yet to be duly appointed and qualified according
24 to law. In the event that any member shall die, resign or be
25 removed from office, his successor shall be appointed and hold
26 office for the unexpired term.

27 (c) Quorum.--Eight members of the board shall constitute a
28 quorum. The board shall select, from among their number, a
29 chairman and a secretary.

30 (d) Reimbursement of expenses.--Each member of the board,

1 excepting the Commissioner of Occupational Affairs and the
2 Secretary of the Department of Transportation or his designee,
3 shall be paid traveling and other necessary expenses and per
4 diem compensation at the rate of \$60 for each day of actual
5 service while on board business.

6 (e) Attendance.--A member who fails to attend three
7 consecutive meetings shall forfeit his seat unless the
8 Commissioner of Professional and Occupational Affairs, upon
9 written request from the member, finds that the member should be
10 excused from a meeting because of illness or the death of an
11 immediate family member.

12 Section 4. Powers and duties of board.

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

14 (1) Provide for and regulate the licensing of
15 salespersons, dealers, brokers, manufacturers, factory
16 branches, distributors, distributor branches, factory or
17 distributor representatives and wholesalers as defined in
18 this act.

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

24 (3) Investigate on its own initiative, upon complaint of
25 the Department of Transportation, Department of Community
26 Affairs, Department of Revenue or the Office of the Attorney
27 General, or upon the verified complaint in writing of any
28 person, any allegations of the wrongful act or acts of any
29 licensee or person required to be licensed hereunder.

30 (4) Administer and enforce this act and to impose

1 appropriate administrative discipline upon licensees found to
2 be in violation of this act.

3 (5) Bring criminal prosecutions for unauthorized,
4 unlicensed or unlawful practice.

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

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

9 (8) Keep minutes and records of all its transactions and
10 proceedings especially with relation to the issuance, denial,
11 registration, formal reprimand, suspension and revocation of
12 licenses. In all actions or proceedings in any court, a
13 transcript of any board record or any part thereof, which is
14 certified to be a true copy by the board, shall be entitled
15 to admission in evidence.

16 (9) Adopt, promulgate and enforce such rules and
17 regulations not inconsistent with this act as are deemed
18 necessary and proper to effectuate the provisions of this
19 act, including but not limited to, established place of
20 business.

21 (10) Submit annually, to the Transportation Committees
22 of the House and Senate, a description of the types of
23 complaints received, status of the cases, board action which
24 has been taken and length of time from the initial complaint
25 to final board resolution.

26 (11) Submit annually to the department, and to the House
27 and Senate Appropriations Committees, 15 days after the
28 Governor has submitted his budget to the General Assembly, an
29 estimate of the financial requirements of the board for its
30 administrative, investigative, legal and miscellaneous

1 expenses.

2 Section 5. License to engage in business.

3 (a) License required.--To promote the public safety and
4 welfare, it shall be unlawful for any person to engage in the
5 business of salesperson, broker, dealer, manufacturer, factory
6 branch, distributor, distributor branch, factory or distributor
7 representative or wholesaler within this Commonwealth unless he
8 has secured a license as required under this act.

9 (b) Mobile home parks.--It shall be unlawful for any person,
10 for a commission, compensation or other consideration, to sell
11 or act as salesperson, broker or sales agent in connection with
12 the sale of one or more mobile homes located in a mobile home
13 park, as provided for in section 11 of the act of November 24,
14 1976 (P.L.1176, No.261), known as the Mobile Home Park Rights
15 Act, unless such person shall be licensed under this act.

16 (c) Salespersons to be employed.--It shall be unlawful for
17 any salesperson to engage in any activity related to the buying,
18 selling or exchanging of a vehicle, unless that person is the
19 dealer or presently employed by a currently licensed vehicle
20 dealer and the sale is conducted pursuant to and as part of the
21 normal business activities of that dealer.

22 (d) Display of license.--Each person to whom a license is
23 issued shall keep the license conspicuously displayed in his
24 principal office or place of business and shall, when required,
25 exhibit such license to any member or authorized representative
26 of the board.

27 Section 6. Biennial renewal.

28 Each license holder shall be required to renew his license
29 biennially; as a condition precedent to biennial renewal, the
30 license holder shall pay a biennial renewal fee and, in the case

1 of a salesperson or manufacturer's representative, he must be
2 presently employed with a dealer or manufacturer which has a
3 current license. The license holder shall comply with all
4 requirements as set forth through regulation by the board.

5 Section 7. Enforcement.

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

9 (1) Inspect all license holders.

10 (2) Authorize investigations of alleged violations.

11 (3) Review and inspect all business records, documents
12 and files relating to practice under this act.

13 (4) Subpoena witnesses.

14 (5) Take depositions of witnesses in the manner provided
15 for in civil actions in courts of record.

16 (6) Bring criminal prosecutions for unauthorized,
17 unlicensed and unlawful practice in accordance with the terms
18 and provisions of the act of October 15, 1980 (P.L.950,
19 No.164), known as the Commonwealth Attorneys Act.

20 Section 8. Warranty and predelivery obligations.

21 (a) Manufacturers to notify dealers of their obligations.--
22 Each new motor vehicle manufacturer shall specify in writing to
23 each of its new motor vehicle dealers licensed in this
24 Commonwealth the dealer's obligations for predelivery
25 preparation and warranty service on its products, shall
26 compensate the new motor vehicle dealer for service required of
27 the dealer by the manufacturer and shall provide the dealer with
28 the schedule of compensation to be paid the dealer for parts,
29 work and service, and the time allowance for the performance of
30 such work and service.

1 (b) Schedule of compensation to include reasonable
2 compensation.--In no event shall the schedule of compensation
3 fail to include reasonable compensation for diagnostic work,
4 repair service and labor. Time allowances for the diagnosis and
5 performance of warranty work and service shall be reasonable and
6 adequate for the work to be performed. In the determination of
7 what constitutes reasonable compensation, the principal factors
8 to be given consideration shall be the prevailing wage rates
9 being paid by the dealers in the community in which the dealer
10 is doing business. The hourly labor rate paid to a dealer for
11 warranty services shall not be less than the rate charged by the
12 dealer for like service to nonwarranty customers for nonwarranty
13 service and repairs at a reasonable rate.

14 (c) Copy of obligation to be filed with board.--A copy of
15 the delivery and preparation obligations of its dealers shall be
16 filed with the board by every motor vehicle manufacturer and
17 shall constitute the dealer's only responsibility for product
18 liability as between the dealer and the manufacturer.

19 (d) Indemnification required.--Notwithstanding the terms of
20 any franchise agreement, it shall be a violation for any new
21 motor vehicle manufacturer to fail to indemnify its franchised
22 dealers against any judgment for damages or settlement approved
23 in writing by the manufacturer, including, but not limited to,
24 court costs and reasonable attorneys' fees of the new motor
25 vehicle dealer, arising out of complaints, claims or lawsuits
26 including, but not limited to, strict liability, negligence,
27 misrepresentation, express or implied warranty or rescission of
28 the sale as defined in 13 Pa.C.S. § 2608 (relating to revocation
29 of acceptance in whole or in part) to the extent that the
30 judgment or settlement relates solely to the alleged defective

1 or negligent manufacture, assembly or design of new motor
2 vehicles, parts or accessories or other functions by the
3 manufacturer, beyond the control of the dealer.

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

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

14 (1) Order or accept delivery of any new motor vehicle,
15 part or accessory thereof, equipment or any other commodity
16 not required by law which shall not have been voluntarily
17 ordered by the new motor vehicle dealer, except that this
18 paragraph is not intended to modify or supersede any terms or
19 provisions of the franchise requiring new motor vehicle
20 dealers to market a representative line of those motor
21 vehicles which the manufacturer or distributor is publicly
22 advertising.

23 (2) Order or accept delivery of any new motor vehicle
24 with special features, accessories or equipment not included
25 in the list price of such motor vehicles as publicly
26 advertised by the manufacturer or distributor.

27 (3) Participate monetarily in an advertising campaign or
28 contest or to purchase any promotional materials, training
29 materials, showroom or other display decorations or materials
30 at the expense of the new motor vehicle dealer.

1 (4) Enter into any agreement with the manufacturer or to
2 do any other act prejudicial to the new motor vehicle dealer
3 by threatening to terminate or cancel a franchise or any
4 contractual agreement existing between the dealer and the
5 manufacturer, except that this paragraph is not intended to
6 preclude the manufacturer or distributor from insisting on
7 compliance with the reasonable terms or provisions of the
8 franchise or other contractual agreement and notice in good
9 faith to any new motor vehicle dealer of the new motor
10 vehicle dealer's violation of such terms or provisions shall
11 constitute a violation of the act.

12 (5) Change the capital structure of the new motor
13 vehicle dealer or the means by or through which the new motor
14 vehicle dealer finances the operation of the dealership,
15 provided that the new motor vehicle dealer at all times meets
16 any reasonable capital standards determined by the
17 manufacturer in accordance with uniformly applied criteria,
18 and also provided that no change in the capital structure
19 shall cause a change in the principal management or have the
20 effect of a sale of the franchise without the consent of the
21 manufacturer or distributor; the consent shall not be
22 unreasonably withheld.

23 (6) Refrain from participation in the management of,
24 investment in or the acquisition of any other line of new
25 motor vehicle or related products. This paragraph does not
26 apply unless the new motor vehicle dealer maintains a
27 reasonable line of credit for each make or line of new motor
28 vehicle, the new motor vehicle dealer remains in compliance
29 with the franchise agreement and any reasonable facilities
30 requirements of the manufacturer, and no change is made in

1 the principal management of the new motor vehicle dealer.

2 (7) Prospectively assent to a release, assignment,
3 novation, waiver or estoppel which would relieve any person
4 from liability to be imposed by this act or to require any
5 controversy between a new motor vehicle dealer and a
6 manufacturer, distributor or representative to be referred to
7 any person other than the duly constituted courts of the
8 Commonwealth or the United States of America, if such
9 referral would be binding upon the new motor vehicle dealer.

10 (8) Expand, construct or significantly modify facilities
11 without assurances that the franchisor will provide a
12 reasonable supply of new motor vehicles within a reasonable
13 time so as to justify such an expansion in light of the
14 market and economic conditions.

15 (b) Additional unlawful acts of manufacturers.--It shall be
16 a violation of this act for any manufacturer, factory branch or
17 distributor licensed under this act to:

18 (1) Delay, refuse or fail to deliver new motor vehicles
19 or new motor vehicle parts or accessories in a reasonable
20 time and in reasonable quantity relative to the new motor
21 vehicle dealer's facilities and sales potential after
22 acceptance of an order from a new motor vehicle dealer having
23 a franchise for the retail sale of any new motor vehicle sold
24 or distributed by the manufacturer or distributor as are
25 covered by such franchise, if such vehicle, parts or
26 accessories are publicly advertised as being available for
27 immediate delivery. There is no violation if the failure is
28 caused by acts or causes beyond the control of the
29 manufacturer.

30 (2) Unfairly discriminate among its new motor vehicle

1 dealers with respect to warranty reimbursement.

2 (3) Unreasonably withhold consent to the sale, transfer
3 or exchange of the franchise to a qualified buyer capable of
4 being licensed as a new motor vehicle dealer in this
5 Commonwealth.

6 (4) Fail to respond in writing to a request for consent
7 as specified in paragraph (3) within 60 days of receipt of a
8 written request on the forms, if any, generally utilized by
9 the manufacturer or distributor for such purposes and
10 containing the information required. Such failure to respond
11 shall be deemed to be refusal to consent to the request.

12 (5) Prevent or attempt to prevent by contract or
13 otherwise, any new motor vehicle dealer from changing the
14 executive management control of the new motor vehicle dealer
15 unless the manufacturer, having the burden of proof, can show
16 that such change of executive management will result in
17 executive management or control by a person or persons who
18 are not of good moral character or who do not meet
19 reasonable, preexisting, and, with consideration given to the
20 volume of sales and service of the dealership, uniformly
21 applied minimum business experience standards. Where the
22 manufacturer rejects a proposed change in executive
23 management control, the manufacturer shall give written
24 notice of his reasons to the dealer within 60 days of notice
25 to the manufacturer by the dealer of the proposed change;
26 otherwise the change in the executive management of the new
27 motor vehicle dealer shall be presumptively deemed approved.

28 (6) Offer to sell or lease, or to sell or lease, any new
29 motor vehicle to, or through, any new motor vehicle dealer at
30 a lower actual price than the actual price offered to any

1 other new motor vehicle dealer for the same model vehicle
2 similarly equipped or to utilize any device including, but
3 not limited to, sales promotion plans or programs which
4 result in such lesser actual price. The provisions of this
5 paragraph shall not apply to sales to a new motor vehicle
6 dealer for resale to any unit of the Federal Government, the
7 Commonwealth or any of its political subdivisions.

8 (7) Offer to sell or lease, or to sell or lease, any new
9 motor vehicle to any person, except a manufacturer's employee
10 at a lower actual price than the actual price offered and
11 charged to a new motor vehicle dealer for the same model
12 vehicle similarly equipped or to utilize any device which
13 results in such lesser actual price. The provisions of this
14 paragraph shall not apply to sales to a new motor vehicle
15 dealer for resale to any unit of the Federal Government, the
16 Commonwealth or any of its political subdivisions.

17 (8) Offer in connection with a sale of a new motor
18 vehicle or vehicles to the Federal Government, the
19 Commonwealth or any political subdivision thereof, any
20 discounts, refunds or any other type of inducement to any new
21 motor vehicle dealer without making the same offer or offers
22 available to all other of its new motor vehicle dealers
23 within this Commonwealth.

24 (9) Offer in connection with the sale of any new motor
25 vehicle or new motor vehicles to a purchaser of more than ten
26 new motor vehicles per model year, terms, discounts, refunds
27 or other similar inducements to that purchaser without making
28 the same offer or offers available on the same terms to all
29 other purchasers of more than ten new motor vehicles per
30 model year from its new motor vehicle dealers in this

1 Commonwealth. No manufacturer or distributor may impose or
2 enforce any restrictions against these new motor vehicle
3 dealers, their leasing, rental or fleet divisions or
4 subsidiaries that is not imposed or enforced against any
5 other similar purchaser.

6 (c) Cancelling of franchises.--Being a manufacturer, factory
7 branch, distributor, field representative, officer, agent or any
8 representative whatsoever of such motor vehicle manufacturer or
9 factory branch, who has unfairly, without due regard to the
10 equities of said dealer and without just provocation, cancelled
11 the franchise of any motor vehicle dealer; or being a
12 manufacturer, factory branch or importer, who unfairly, without
13 due regard to the equities of a distributor and without just
14 provocation cancelled the franchise of any distributor. All
15 existing dealers' franchises shall continue in full force and
16 operation under a newly appointed distributor on the termination
17 of an existing distributor unless a mutual agreement of
18 cancellation is filed with the board between the newly appointed
19 distributor and such dealer. Not less than 60 days advance
20 notice of such termination, cancellation or failure to renew
21 shall be given the dealer prior to the effective date thereof
22 unless the nature or character of the reason for termination,
23 cancellation or failure to renew is such that the giving of such
24 notice would not be in the public interest. At any time before
25 the effective date of such termination, cancellation or failure
26 to renew, the dealer may appeal to the board for a hearing on
27 the merits, and following due notice to all parties concerned,
28 such hearing shall be promptly held. No such termination,
29 cancellation or failure to renew shall become effective until
30 final determination of the issue by the board. In the event of a

1 dealer appeal, the burden of proof shall be on the manufacturer
2 to show that such termination, cancellation or failure to renew
3 was for good cause and in good faith.

4 (d) Bushing.--Being a motor vehicle dealer having accepted
5 an order of purchase or a contract from a buyer which offer of
6 purchase or contract is subject to subsequent acceptance by the
7 seller, if such arrangement results in the practice of bushing.
8 For the purpose of this subsection, bushing is defined as the
9 practice of increasing the selling price of a car above that
10 originally quoted the purchaser or decreasing the allowance for
11 trade-in of a used car after the purchaser has signed a purchase
12 order or contract which is subject to subsequent acceptance by
13 the seller, however, if a used car is being used as the down
14 payment and it is not to be delivered to the dealer until the
15 delivery of the new car, the used car shall be reappraised at
16 that time and such reappraisal value shall determine the
17 allowance made for such used car.

18 (e) Construction of section.--This section shall not be
19 construed to prevent the offering of incentive programs or other
20 discounts if such discounts are equally available to all
21 franchised motor vehicle dealers in this Commonwealth on a
22 proportionately equal basis.

23 Section 10. Grounds for disciplinary proceedings.

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

1 in section 13 or any of the following acts:

2 (1) Having had his license revoked or suspended by the
3 Commonwealth or another state based on grounds similar to
4 those which in this Commonwealth allow disciplinary
5 proceedings, in which case the record of such revocation or
6 suspension shall be conclusive evidence.

7 (2) Knowingly make any substantial misrepresentation of
8 material facts.

9 (3) Knowingly make any false promise of a character
10 likely to influence, persuade or induce the sale of a motor
11 vehicle.

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

21 (5) Having knowingly failed or refused to account for
22 moneys or other valuables belonging to others which have come
23 into his possession arising out of the sale of motor
24 vehicles.

25 (6) Having engaged in false, deceptive or misleading
26 advertising of motor vehicles.

27 (7) Having committed any act or engaged in conduct in
28 connection with the sale of motor vehicles which clearly
29 demonstrates incompetency.

30 (8) Having made a material misstatement in application

1 for license.

2 (9) Having set up, promoted or aided in promotion of a
3 plan by which motor vehicles are sold to a person for
4 consideration and upon the further consideration that the
5 purchaser agrees to secure one or more persons to participate
6 in the plan by respectively making a similar purchase and in
7 turn agreeing to secure one or more persons likewise to join
8 in said plan, each purchaser being given the right to secure
9 money, credits, goods or something of value, depending upon
10 the number of persons joining in the plan.

11 (10) Having engaged in the buying, selling, exchanging,
12 trading or otherwise dealing in vehicles on Sunday in
13 violation of 18 Pa.C.S. § 7365 (relating to trading in motor
14 vehicles and trailers).

15 (11) Being a dealer who advertises or otherwise holds
16 out to the public that he is selling new motor vehicles for
17 which he does not hold a contract in writing with a
18 manufacturer, importer or distributor giving said dealer
19 authority to sell such motor vehicles.

20 (12) Being a dealer who sells new motor vehicles for
21 which he does not hold a contract in writing with a
22 manufacturer, importer or distributor giving said dealer
23 authority to sell these motor vehicles. For the purpose of
24 paragraph (11) and this paragraph, the term "new motor
25 vehicle" shall mean a new motor vehicle which has never been
26 registered or titled in Pennsylvania or any other state on
27 which a tax for education imposed by the act of March 4, 1971
28 (P.L.6, No.2), known as the Tax Reform Code of 1971, has not
29 been paid prior to the sale.

30 (13) Failing to take immediate remedial action when the

1 dealer knows that someone in his direct employ or someone who
2 renders vehicle-related services to the dealer for
3 consideration, has unlawfully tampered with the odometer of a
4 vehicle in his care, custody or control or which has been
5 sold or exchanged by the dealer at wholesale or retail. For
6 the purpose of this paragraph, remedial action shall be
7 defined as at least reporting the incident in writing to the
8 Pennsylvania State Police or the board.

9 (14) Engaging in the business for which such dealer is
10 licensed without at all times maintaining an established
11 place of business as required.

12 (15) Employing any person as a salesperson who has not
13 been licensed as required.

14 (16) Having had his vehicle business registration plates
15 (dealer identification number) suspended by the Department of
16 Transportation pursuant to 75 Pa.C.S. § 1374(a) (relating to
17 suspension of vehicle business registration plates). A
18 certified copy of the decision and order of the Department of
19 Transportation will constitute conclusive evidence.

20 (17) Being a new car dealer whose franchise, contract or
21 agreement with a manufacturer, which gives the subject dealer
22 selling rights for that line-make, has been finally
23 terminated, but who continues to sell new vehicles.

24 (18) Willfully failing to display a license.

25 (19) Failing to obey any order of the board entered
26 pursuant to the act.

27 (20) Permitting or allowing another individual or
28 organization not licensed by the board to use that
29 individual's license for the purpose of operating in this
30 Commonwealth in a capacity for which the individual or

1 organization should have held a license.

2 (21) Willfully having made any false statement as to a
3 material matter in any oath or affidavit which is required by
4 this act.

5 (22) Failing to collect a tax or fee due the
6 Commonwealth upon a sale of a vehicle as defined in 75
7 Pa.C.S. § 102 (relating to definitions).

8 (23) Collecting a tax or fee and failing to issue a true
9 copy of the tax report to the purchaser as required by law.

10 (24) Issuing a false or fraudulent tax report or copy
11 thereof.

12 (25) Failing to pay over taxes or fees collected by him
13 to the Commonwealth at the time and in the manner required by
14 law.

15 Section 11. Administrative liability of employer,
16 copartnership, association or corporation.

17 In the event of the revocation of the license issued to any
18 member of a partnership or to any officer of an association or
19 corporation, the license issued to a partnership, association or
20 corporation shall be revoked by the board unless, within a time
21 fixed by the board, in the case of a partnership, the connection
22 of the member whose license has been revoked shall be severed
23 and his interest in the partnership and his share in its
24 activities brought to an end, or in the case of an association
25 or corporation, the offending officer shall be discharged and
26 shall have no further participation in its activities.

27 Section 12. Reinstatement.

28 (a) Suspension.--Upon application in writing and after a
29 hearing pursuant to notice, the board may reissue or modify the
30 suspension of any license which has been suspended.

1 (b) Revocation.--Unless ordered to do so by a court, the
2 board shall not reinstate the license of a person that has been
3 revoked and such person shall be required to apply for a license
4 in accordance with section 13 if he desires to practice at any
5 time after such revocation.

6 Section 13. Application for license.

7 (a) Contents of application; dealer's license.--Application
8 for license as a dealer shall be made in writing to the board,
9 signed by the applicant, setting forth the following:

10 (1) Name of applicant and location of principal place of
11 business.

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

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

16 (4) Locations in which the business is to be conducted
17 if the dealer has more than one place of business.

18 (5) If new vehicles are to be sold, the make or makes to
19 be handled.

20 (6) A statement of the previous history, record and
21 association of the applicant and of each owner, partner,
22 officer and director, which statement shall be sufficient to
23 establish to the satisfaction of the board the reputation in
24 business of the applicant.

25 (7) A statement showing whether the applicant has
26 previously applied for a license and the result of such
27 application and whether the applicant has ever been the
28 holder of either a dealer or salesperson license which was
29 revoked or suspended.

30 (8) If the applicant is a corporation or partnership, a

1 statement showing whether any of the partners, employees,
2 officers or directors have been refused a dealer's or
3 salesperson's license or have been the holder of such license
4 which was revoked or suspended.

5 (9) A statement by the applicant that he has met all
6 facility requirements as noted herein and as required by
7 regulation.

8 (b) Contents of application; salesperson's license.--

9 Application for license as a salesperson shall be made in
10 writing to the board, signed by the applicant, setting forth the
11 following:

12 (1) The applicant's name and address.

13 (2) The period of time, if any, during which he has been
14 engaged in the occupation of salesperson.

15 (3) The name and address of his last employer.

16 (4) The name and address of the dealer then employing
17 him or into whose employ he is about to enter.

18 (5) The recommendation of his employer or prospective
19 employer certifying that the applicant is honest, trustworthy
20 and of good repute and recommending that a license be
21 granted. In the case of an applicant who is himself a dealer,
22 an officer of a corporation which is a dealer or a member of
23 a partnership which is a dealer, the foregoing recommendation
24 shall be made by another dealer, bank or sales finance
25 company which has personal knowledge concerning the
26 reputation and fitness of the applicant.

27 (6) A statement showing whether the applicant has
28 previously applied for a license and the result of such
29 application and whether the applicant has ever been the
30 holder of a salesperson's license which was revoked or

1 suspended or the subject of disciplinary action by this board
2 or that of any other jurisdiction.

3 (7) The application shall be made upon a form prepared
4 by the board containing such other information as the board
5 shall require through regulation.

6 (c) Application for license other than as a dealer or
7 salesperson.--Application for license other than as a dealer or
8 salesperson shall be made in writing to the board accompanied by
9 the required fee. The board may require, in such application or
10 otherwise, information relating to the applicant's background
11 and his financial standing, all of which may be considered by
12 the board in determining the fitness of said applicant to engage
13 in the business for which he desires to be licensed.

14 Section 14. Refusal of license.

15 The board may refuse to issue a license if the applicant has
16 committed any of the acts set forth as grounds for the
17 suspension or revocation of a license. The board may also refuse
18 to issue a license when it determines:

19 (1) That the applicant was previously the holder of a
20 license issued under this act, which license was revoked for
21 cause or which license was suspended for cause and the terms
22 of the suspension have not been fulfilled.

23 (2) That the applicant was previously a limited or
24 general partner, stockholder, director or officer of a
25 partnership or corporation whose license issued under the
26 authority of this act was revoked for cause and never
27 reissued or was suspended for cause and the terms of
28 suspension have not been fulfilled.

29 (3) If the applicant is a partnership or corporation,
30 that one or more of the limited or general partners,

1 stockholders, directors or officers was previously the holder
2 of a limited or general partner, stockholder, director or
3 officer of a partnership or corporation whose license issued
4 under the authority of this act was revoked for cause or was
5 suspended for cause and the terms of the suspension have not
6 been fulfilled, or that by reason of the facts and
7 circumstances touching the organization, control and
8 management of the partnership or corporation business, the
9 policy of such business will be directed, controlled or
10 managed by individuals who, by reason of their conviction of
11 violations of the provisions of this act, would be ineligible
12 for a license and that by licensing such corporation or
13 partnership, the purposes of this act would likely be
14 defeated.

15 Section 15. Change of salesperson's license to indicate new
16 employer.

17 If a person holding a currently valid license desires to be
18 licensed to sell for another employer, he shall make application
19 to the board for the issuance of a new license showing the name
20 of his proposed new employer. Such application shall be made on
21 a form of application prescribed by the board and shall include
22 the recommendation of his proposed new employer. The new license
23 shall be issued for the remainder of the period covered by the
24 previous license. The fee for the issuance of such changed
25 license shall be \$5.

26 Section 16. Termination of employment or business.

27 (a) Salesperson's license to be surrendered after
28 termination of employment.--Within ten days after termination of
29 employment, the dealer shall surrender that salesperson's
30 license to the board. If the license is not in the dealer's

1 possession, then it will be the responsibility of the
2 salesperson to return the license.

3 (b) Dealer's license to be surrendered after termination of
4 business.--Within ten days after termination of business
5 activities, the dealer shall surrender to the board its vehicle
6 dealer's license.

7 Section 17. Exemption from licensure and registration.

8 This act shall not be construed to require licensure and
9 registration in the following cases:

10 (1) Public officers in the conduct of sales of vehicles
11 in the performance of their official duties.

12 (2) Sales finance companies and banks licensed under the
13 provisions of the act of June 28, 1947 (P.L.1110, No.476),
14 known as the Motor Vehicle Sales Finance Act, in the conduct
15 of sales of vehicles which have been repossessed by them.

16 Section 18. Penalties.

17 (a) Unlicensed salespersons and brokers.--Whoever engages in
18 the occupation of vehicle salesperson or who sells or acts as a
19 sales agent or broker in connection with the sale of a vehicle
20 or of a mobile home in a mobile home park, without being
21 licensed and registered as required by this act or exempted from
22 licensure or shall present or attempt to use as his own the
23 license of another or shall give any false or forged evidence of
24 any kind to the board or to any member in order to obtain a
25 license, or shall refuse upon request to furnish business
26 records, documents and files relating to practice under this
27 act, or shall otherwise violate the provisions of this act shall
28 be guilty of a summary offense and, upon conviction, shall be
29 ordered to pay a fine of \$500. A second violation of this act
30 shall constitute a summary offense and, upon conviction, the

1 violator shall be ordered to pay a fine of \$1,000. For the
2 purpose of this act the sale of each vehicle in violation of
3 this act constitutes a separate offense.

4 (b) Unlicensed manufacturers, etc.--Whoever engages in the
5 business of vehicle dealer, manufacturer, factory branch,
6 distributor, distributor branch, factory or distributor
7 representative or wholesaler without being licensed and
8 registered as required or exempted from licensure as provided,
9 or shall present or attempt to use as his own the license of
10 another or shall give any false or forged evidence of any kind
11 to the board or to any member in order to obtain a license or
12 shall refuse, upon request, to furnish business records,
13 documents and files relating to practice or shall otherwise
14 violate the provisions of this act, shall be guilty of a summary
15 offense and, upon conviction, shall be sentenced to pay a fine
16 of \$500 or any higher amount equal to double the pecuniary gain
17 derived from the offense. A second violation of this act shall
18 constitute a summary offense and, upon conviction, the violator
19 shall be ordered to pay a fine of \$1,000. For the purpose of
20 this act the sale of each vehicle in violation of this act
21 constitutes a separate offense.

22 (c) Additional remedy.--In addition to any other civil
23 remedy or criminal penalty provided for in this act, the board
24 by a vote of the majority of the authorized membership of the
25 board as provided by law, or by a vote of the majority of the
26 duly qualified and confirmed membership, may levy a civil
27 penalty of up to \$1,000 on any current licensee who violates any
28 provision of this act or on any person who engages in an
29 activity required to be licensed by this act. The board shall
30 levy this penalty only after affording the accused party the

1 opportunity for a hearing as provided in Title 2 of the
2 Pennsylvania Consolidated Statutes (relating to administrative
3 law and procedure).

4 Section 19. Civil actions for violations.

5 (a) Action for damages.--Notwithstanding the terms,
6 provisions or conditions of any agreement or franchise or other
7 terms or provisions of any novation, waiver or other written
8 instrument, any person who is or may be injured by a violation
9 of a provision of this act or any party to a franchise who is so
10 injured in his business or property by a violation of a
11 provision of this act relating to that franchise, or any person
12 so injured because he refuses to accede to a proposal for an
13 arrangement which, if consummated, would be in violation of this
14 act, may bring an action for damages and equitable relief,
15 including injunctive relief, in any court of competent
16 jurisdiction.

17 (b) Punitive damages.--If the manufacturer engages in
18 continued multiple violations of a provision or provisions of
19 this act, the court may award punitive damages in addition to
20 any other damages under this act.

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

24 Section 20. Applicability of act.

25 (a) Persons having contacts in Pennsylvania subject to
26 act.--Any person who engages directly or indirectly in doing
27 business within the Commonwealth in connection with the offering
28 or advertising for sale or is doing business with respect to a
29 new or used motor vehicle sale shall be subject to the
30 provisions of this act and shall be subject to the jurisdiction

1 of the courts of this Commonwealth.

2 (b) Act controls over written instruments.--The
3 applicability of this act shall not be affected by a choice of
4 law clause in any franchise, agreement, waiver, novation or any
5 other written instrument.

6 Section 21. Fees.

7 (a) Licensure fees.--The fee for an applicant for licensure
8 shall be:

9 (1) For salesperson, \$15 for the initial registration
10 and \$10 for each biennial renewal.

11 (2) For dealers, \$25 for the initial registration and
12 \$15 for each biennial renewal. Each office or branch shall be
13 separately licensed and shall pay the same fees. Each used
14 car lot not immediately adjacent to the licensed premises
15 shall be issued a supplemental license for which a biennial
16 fee of \$10 shall be charged.

17 (3) For manufacturers, brokers, distributors or
18 wholesalers, the same as for dealers.

19 (4) For factory representatives or distributor branch
20 representatives, the same as for salespersons.

21 (b) Other fees.--Manufacturers, wholesalers and distributors
22 may operate as a dealer without any additional fee or license.

23 Section 22. Disposition of fees and fines.

24 All civil fines and fees shall be paid into the Special
25 Augmentation Fund established by section 301 of the act of July
26 1, 1978 (P.L.700, No.124), known as the Bureau of Professional
27 and Occupational Affairs Fee Act. All criminal fines shall be
28 paid into the State Treasury for the use of the Commonwealth.

29 Section 23. Savings provision.

30 This act shall not be deemed to repeal, suspend, modify or

1 revoke any of the provisions of Title 75 of the Pennsylvania
2 Consolidated Statutes (relating to vehicles) or of the act of
3 June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle
4 Sales Finance Act.

5 Section 24. Limitations.

6 (a) Two-year statute of limitation.--Actions arising out of
7 any provision of this act shall be commenced within a two-year
8 period of the accrual of the cause of action. If a person liable
9 hereunder conceals the cause of action from the knowledge of the
10 person entitled to bring it, the period prior to the discovery
11 of his cause of action by the person entitled shall be excluded
12 in determining the time limited for the commencement of the
13 action.

14 (b) One-year statute of limitation.--If a cause of action
15 accrues during the pendency of any civil, criminal or
16 administrative proceeding against a person brought by the
17 Federal Government, or any of its agencies under the antitrust
18 laws, the Federal Trade Commission Act, or any other Federal
19 act, or the laws as to franchising, actions may be commenced
20 within one year after the final disposition of such civil,
21 criminal or administrative proceeding.

22 Section 25. Repeals.

23 (a) Specific repeal.--The act of September 9, 1965 (P.L.499,
24 No.254), known as the Motor Vehicle Manufacturer's, Dealer's and
25 Salesmen's License Act, is repealed.

26 (b) General repeal.--All acts and parts of acts are repealed
27 insofar as they are inconsistent with this act.

28 Section 26. Expiration of terms of board members.

29 Persons who are members of the State Board of Motor Vehicle
30 Manufacturers, Dealers and Salesmen shall serve on said board

1 until their current terms expire or until their successors are
2 duly appointed and qualified, but no longer than six months
3 after the expiration of their terms.

4 Section 27. Expiration.

5 This act shall expire December 31, 1991.

6 Section 28. Effective date.

7 This act shall take effect January 1, 1984.