

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1454 Session of 1983

INTRODUCED BY HUTCHINSON, DININNI AND LETTERMAN, SEPTEMBER 19, 1983

AS REPORTED FROM COMMITTEE ON TRANSPORTATION, HOUSE OF REPRESENTATIVES, OCTOBER 11, 1983

AN ACT

1 Providing for the State Board of ~~Motor~~ Vehicle Manufacturers, <—
2 Dealers and Salespersons; AND PROVIDING PENALTIES. <—

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

30 Section 1. Short title.

1 This act shall be known and may be cited as the Board of
2 ~~Motor~~ Vehicles Act. <—

3 Section 2. Definitions.

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

7 "Agreement." A contract or franchise or any other written
8 instrument which describes the contractual relationship between
9 a manufacturer, distributor, importer or dealer and at least one
10 other person.

11 "Board." The State Board of ~~Motor~~ Vehicle Manufacturers, <—
12 Dealers and Salespersons.

13 "Branch lot." An office and lot maintained in addition to
14 the main office and lot of a licensed vehicle dealer. The branch
15 lot shall meet the facility requirements defined herein and by
16 regulations as a main lot, unless used solely for the storage of
17 ~~motor~~ vehicles. <—

18 "Broker." Any person who, for a commission, compensation or
19 other valuable consideration, engages or participates in the
20 wholesale or retail sale in one calendar year of five or more
21 used vehicles or any new vehicle as the agent for the buyer or
22 seller. For the purposes of this definition, the broker need not
23 have custody or control of the subject vehicle but shall have
24 the authority of the buyer or seller to negotiate or conduct a
25 transaction on behalf of the buyer or seller. This definition
26 shall specifically include car auctions.

27 "Bushing." The practice of increasing the selling price of a
28 ~~motor~~ vehicle above that originally quoted the purchaser or <—
29 decreasing the allowance for trade-in of a used ~~motor~~ vehicle <—
30 after the purchaser has signed a purchase order or contract

1 which is subject to subsequent acceptance by the seller. If a
2 used ~~motor~~ vehicle is being used as the down payment and it is ←
3 not to be delivered to the dealer until delivery of the new
4 ~~motor~~ vehicle, the used ~~motor~~ vehicle may be reappraised at that ←
5 time if the dealer can establish that the vehicle has suffered
6 damage or serious mechanical deterioration since date of
7 original valuation. Reappraisal value may determine the
8 allowance made for such used car.

9 "Curb-stoner or unlicensed salesperson." Any person who, for
10 a commission, compensation or other valuable consideration, and
11 without being licensed in accordance with this act as a
12 salesperson, engages in the wholesale or retail sale, exchange
13 or purchase in one calendar year of five or more used vehicles
14 or any new vehicle.

15 "Dealer." All of the following:

16 (1) A person engaged in and devoting a substantial
17 portion of time to the business of buying, selling or
18 exchanging new and used ~~motor~~ vehicles, trailers or ←
19 semitrailers on commission, compensation or other
20 consideration, ~~who maintains a salesroom or garage devoted ←
21 principally to the motor vehicle business and an established
22 place of business and who holds a written contract with a
23 manufacturer, importer or distributor, giving such person
24 selling rights for new motor vehicles, trailers or
25 semitrailers or who is an importer or distributor of new
26 motor vehicles, trailers or semitrailers who holds a contract
27 in writing with a manufacturer of motor vehicles, trailers
28 and semitrailers.~~

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

1 exchanging used ~~motor~~ vehicles, tractors, trailers or <—
2 semitrailers on commission, compensation or other
3 consideration ~~who maintains an established place of business,~~ <—
4 ~~which includes at least a two bay garage equipped to perform~~
5 ~~the usual and normal repair and servicing of motor vehicles,~~
6 ~~or by written contract which has available at all times such~~
7 ~~repair or servicing facilities or a combination thereof and~~
8 ~~upon which or adjacent thereto is a building or portion of a~~
9 ~~building, owned or rented by such person, where books and~~
10 ~~records are kept.~~ The term includes fleet owners who engage
11 directly in the retail sale of fleet vehicles.

12 (3) A person engaged in and devoting a substantial
13 portion of time to the business of buying, selling or
14 exchanging mobile homes, house trailers or office trailers on
15 commission, compensation or other consideration, ~~who~~ <—
16 ~~maintains a minimum display area of 5,000 square feet devoted~~
17 ~~principally to the mobile home, house trailer or office~~
18 ~~trailer business, who maintains an established place of~~
19 ~~business and who holds a contract in writing with a~~
20 ~~manufacturer giving such person selling rights for new mobile~~
21 ~~homes, house trailers or office trailers.~~

22 (4) A person engaged in and devoting a substantial
23 portion of time to the business of buying, selling or
24 exchanging used mobile homes, house trailers or office
25 trailers on commission, compensation or other consideration, <—
26 ~~who maintains a minimum display area of 5,000 square feet,~~
27 ~~and upon which or adjacent thereto is a building or a portion~~
28 ~~of a building, owned or rented by such person, where books~~
29 ~~and records are kept.~~

30 (5) A person engaged in and devoting a substantial

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

7 (6) A person engaged in and devoting a substantial
8 portion of his time to the business of buying, selling or
9 exchanging used recreational vehicles on commission or
10 otherwise ~~and who maintains an established place of business~~ ←
11 ~~and a minimum useable display area of 5,000 square feet~~
12 ~~devoted principally to the recreational vehicle business.~~

13 "Department." The Department of State acting through the
14 Commissioner of Professional and Occupational Affairs.

15 "Distributor." A person, resident or nonresident, who sells
16 or distributes vehicles to dealers or who maintains distributor
17 representatives.

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

20 "Distributor representative." A representative similarly
21 employed by a distributor, distributor branch or wholesaler.

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

29 "Factory branch." A branch office maintained by a
30 manufacturer for the sale of vehicles to distributors or dealers

1 or for directing or supervising, in whole or part, its
2 representatives.

3 "Factory representative." A representative employed by a
4 manufacturer or by factory branch for the purpose of making or
5 promoting the sale of its vehicles or for supervising or
6 contacting its dealers or prospective dealers.

7 "Fleet owner." Any person who owns a group of 15 or more
8 vehicles.

9 "Franchise." The written agreement or contract between any
10 new vehicle manufacturer and any new vehicle dealer which
11 purports to fix the legal rights and liabilities of the parties
12 to such agreement or contract, and pursuant to which the dealer
13 purchases and resells the franchise product or leases or rents
14 the dealership premises.

15 "Manufacturer." Any person, resident or nonresident, who
16 manufactures or assembles vehicles or who manufactures or
17 installs on previously assembled chassis special bodies or
18 equipment which when installed form an integral part of a
19 vehicle and which constitute a major manufacturing alteration.

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

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

28 "Person." Any individual, corporation, partnership,
29 association or other entity foreign or domestic.

30 "Recreational vehicle." A vehicular unit primarily designed

1 as temporary living quarters for recreational, camping or travel
2 use, which either has its own motive power or is mounted on or
3 drawn by another vehicle but shall not include a camping
4 trailer. The basic entities are: travel trailer, house trailer,
5 slide-on camper and motor home.

6 "RELEVANT MARKET AREA." THE AREA WITHIN A RADIUS OF 20 MILES ←
7 AROUND AN EXISTING DEALER OR THE AREA OF RESPONSIBILITY DEFINED
8 IN THE FRANCHISE, WHICHEVER IS GREATER; EXCEPT THAT, WHERE A
9 MANUFACTURER IS SEEKING TO ESTABLISH AN ADDITIONAL NEW VEHICLE
10 DEALER, THE RELEVANT MARKET AREA SHALL BE IN ALL INSTANCES,
11 EXCEPT FOR CITIES OF THE FIRST AND SECOND CLASS WHICH WILL BE
12 THE AREA WITHIN A FIVE-MILE RADIUS, THE AREA WITHIN A RADIUS OF
13 TEN MILES AROUND THE PROPOSED SITE. RELEVANT MARKET AREA SHALL
14 NOT APPLY TO MOBILE HOME OR RECREATIONAL VEHICLE DEALER OR
15 MANUFACTURER AGREEMENTS.

16 "Retail sale" or "sale at retail." The act or attempted act
17 of selling, bartering, exchanging or otherwise disposing of a
18 vehicle to an ultimate purchaser.

19 "Salesperson." Any person who, for a commission,
20 compensation or other valuable consideration, is employed as a
21 salesperson by a dealer to sell vehicles at retail. Any
22 salesperson licensed hereunder shall be licensed to sell only
23 for one dealer at a time and his license shall indicate the name
24 of that dealer. The term includes the principal, an officer or a
25 partner of a dealer if he personally is actively engaged in the
26 retail sale of vehicles.

27 "Vehicle." Every device which is or may be moved or drawn
28 upon a highway, except devices moved by human or animal power,
29 those used exclusively upon rails or tracks or motorized
30 pedalcycles.

1 "Wholesaler." A ~~person, resident or nonresident,~~ RESIDENT <—
2 PERSON who is in the business of buying, selling or exchanging
3 vehicles to dealers.

4 Section 3. State Board of ~~Moter~~ Vehicle Manufacturers, Dealers <—
5 and Salespersons.

6 (a) Board.--The State Board of ~~Moter~~ Vehicle Manufacturers, <—
7 Dealers and Salespersons shall consist of ~~15~~ 17 members, one of <—
8 whom shall be the Commissioner of Professional and Occupational
9 Affairs, one of whom shall be the Secretary of the Department of
10 Transportation, or his designee, ~~who shall be ex officio members~~ <—
11 ~~of said board,~~ ONE OF WHOM SHALL BE THE DIRECTOR OF CONSUMER <—
12 PROTECTION IN THE OFFICE OF ATTORNEY GENERAL, OR HIS DESIGNEE,
13 and the remaining ~~13~~ 14 of whom shall be appointed by the <—
14 Governor as follows:

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

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

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

24 (4) One shall be a salesperson who has been actively
25 engaged in the sale of new or used vehicles for a period of
26 five years immediately preceding appointment. The member
27 shall not be a dealer or an officer of a corporation or a
28 member of a partnership engaged in the business of a dealer
29 at the time of appointment.

30 (5) One shall be a recreational dealer who has been

1 actively engaged as such for a period of five years
2 immediately preceding appointment.

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

6 (7) ~~Three~~ FOUR shall be members of the general public ←
7 having no connection with the vehicle business, particularly
8 repairing or financing of ~~motor~~ vehicles. ←

9 (b) Terms of members.--The terms of the members of the board
10 shall be three years from the respective date of their
11 appointment, provided that a member may continue for a period
12 not to exceed six months beyond the expiration of his term if a
13 successor has yet to be duly appointed and qualified according
14 to law. In the event that any member shall die, resign or be
15 removed from office, his successor shall be appointed and hold
16 office for the unexpired term.

17 (c) Quorum.--~~Eight~~ NINE members of the board shall ←
18 constitute a quorum. The board shall select, from among their
19 number, a chairman and a secretary.

20 (d) Reimbursement of expenses.--Each member of the board,
21 excepting the Commissioner of Professional and Occupational
22 Affairs, THE DIRECTOR OF THE BUREAU OF CONSUMER PROTECTION IN ←
23 THE OFFICE OF ATTORNEY GENERAL OR HIS DESIGNEE, and the
24 Secretary of the Department of Transportation or his designee,
25 shall be paid traveling and other necessary expenses and per
26 diem compensation at the rate of \$60 for each day of actual
27 service while on board business.

28 (e) Attendance.--A member who fails to attend three
29 consecutive meetings shall forfeit his seat unless the
30 Commissioner of Professional and Occupational Affairs, upon

1 written request from the member, finds that the member should be
2 excused from a meeting because of illness or the death of an
3 immediate family member.

4 Section 4. Powers and duties of board.

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

6 (1) Provide for and regulate the licensing of
7 salespersons, dealers, brokers, manufacturers, factory
8 branches, distributors, distributor branches, factory or
9 distributor representatives and wholesalers as defined in
10 this act.

11 (2) Review and pass upon the qualifications of
12 applicants for licensure and to issue, except as otherwise
13 provided herein, a license to engage in the said businesses
14 to any applicant who is approved by the board and who meets
15 the requirements of this act.

16 (3) Investigate on its own initiative, upon complaint of
17 the Department of Transportation, Department of Community
18 Affairs, Department of Revenue or the Office of the Attorney
19 General, or upon the verified complaint in writing of any
20 person, any allegations of the wrongful act or acts of any
21 licensee or person required to be licensed hereunder.

22 (4) Administer and enforce this act and to impose
23 appropriate administrative discipline upon licensees found to
24 be in violation of this act.

25 (5) Bring criminal prosecutions for unauthorized,
26 unlicensed or unlawful practice.

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

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

1 (8) Keep minutes and records of all its transactions and
2 proceedings especially with relation to the issuance, denial,
3 registration, formal reprimand, suspension and revocation of
4 licenses. In all actions or proceedings in any court, a
5 transcript of any board record or any part thereof, which is
6 certified to be a true copy by the board, shall be entitled
7 to admission in evidence.

8 (9) Adopt, promulgate and enforce such rules and
9 regulations not inconsistent with this act as are deemed
10 necessary and proper to effectuate the provisions of this
11 act, including but not limited to, established place of
12 business.

13 (10) Submit annually, to the Transportation Committees
14 of the House and Senate, a description of the types of
15 complaints received, status of the cases, board action which
16 has been taken and length of time from the initial complaint
17 to final board resolution.

18 (11) Submit annually to the department, and to the House
19 and Senate Appropriations Committees, 15 days after the
20 Governor has submitted his budget to the General Assembly, an
21 estimate of the financial requirements of the board for its
22 administrative, investigative, legal and miscellaneous
23 expenses.

24 Section 5. License to engage in business.

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

1 (b) Mobile home parks.--It shall be unlawful for any person,
2 for a commission, compensation or other consideration, to sell
3 or act as salesperson, broker or sales agent in connection with
4 the sale of one or more mobile homes located in a mobile home
5 park, as provided for in section 11 of the act of November 24,
6 1976 (P.L.1176, No.261), known as the Mobile Home Park Rights
7 Act, unless such person shall be licensed under this act.

8 (c) Salespersons to be employed.--It shall be unlawful for
9 any salesperson to engage in any activity related to the buying,
10 selling or exchanging of a vehicle, unless that person is the
11 dealer or presently employed by a currently licensed vehicle
12 dealer and the sale is conducted pursuant to and as part of the
13 normal business activities of that dealer.

14 (d) Display of license.--Each person to whom a license is
15 issued shall keep the license conspicuously displayed in his
16 principal office or place of business and shall, when required,
17 exhibit such license to any member or authorized representative
18 of the board.

19 Section 6. Biennial renewal.

20 Each license holder shall be required to renew his license
21 biennially; as a condition precedent to biennial renewal, the
22 license holder shall pay a biennial renewal fee and, in the case
23 of a salesperson or manufacturer's representative, he must be
24 presently employed with a dealer or manufacturer which has a
25 current license. The license holder shall comply with all
26 requirements as set forth through regulation by the board.

27 Section 7. Enforcement.

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

- 1 (1) Inspect all license holders.
- 2 (2) Authorize investigations of alleged violations.
- 3 (3) Review and inspect all business records, documents
4 and files relating to practice under this act.
- 5 (4) Subpoena witnesses.
- 6 (5) Take depositions of witnesses in the manner provided
7 for in civil actions in courts of record.
- 8 (6) Bring criminal prosecutions for unauthorized,
9 unlicensed and unlawful practice in accordance with the terms
10 and provisions of the act of October 15, 1980 (P.L.950,
11 No.164), known as the Commonwealth Attorneys Act.

12 ANY HEARING ON A PROTEST BY A DEALER OF ANY ACTION BY A ←
13 MANUFACTURER ALLEGED TO BE IN VIOLATION OF A PROVISION OF THIS
14 ACT MUST BE CONDUCTED AND THE FINAL DETERMINATION MADE WITHIN
15 120 DAYS AFTER THE PROTEST IS FILED. UNLESS WAIVED BY THE
16 PARTIES, FAILURE TO DO SO WILL BE DEEMED THE EQUIVALENT OF A
17 DETERMINATION THAT THE MANUFACTURER ACTED WITH GOOD CAUSE AND,
18 IN THE CASE OF A PROTEST OF A PROPOSED ESTABLISHMENT OR
19 RELOCATION OF A DEALER UNDER SECTION 10, THAT GOOD CAUSE DOES
20 NOT EXIST FOR REFUSING TO PERMIT THE PROPOSED ADDITIONAL OR
21 RELOCATED NEW VEHICLE DEALER, UNLESS SUCH DELAY IS CAUSED BY
22 ACTS OF THE MANUFACTURER OR THE ADDITIONAL OR RELOCATING DEALER.
23 ANY PARTIES TO SUCH A HEARING SHALL HAVE A RIGHT OF REVIEW OF
24 THE DECISION IN A COURT OF COMPETENT JURISDICTION PURSUANT TO 2
25 P.A.C.S. § 701 (RELATING TO SCOPE OF SUBCHAPTER). IF THE BOARD
26 DETERMINED THAT GOOD CAUSE DOES NOT EXIST FOR REFUSING TO PERMIT
27 THE PROPOSED ADDITIONAL OR RELOCATED NEW VEHICLE DEALER, AND THE
28 MANUFACTURER THEREAFTER ENTERS INTO A FRANCHISE ESTABLISHING
29 THAT NEW VEHICLE DEALER, THE MANUFACTURER SHALL NOT BE LIABLE
30 FOR DAMAGES BASED UPON SUCH ESTABLISHMENT EVEN IF A COURT

1 REVERSES THE DETERMINATION OF THE BOARD.

2 Section 8. Warranty and predelivery obligations.

3 (a) Manufacturers to notify dealers of their obligations.--

4 Each new ~~motor~~ vehicle manufacturer shall specify in writing to <—
5 each of its new ~~motor~~ vehicle dealers licensed in this <—
6 Commonwealth the dealer's obligations for predelivery
7 preparation and warranty service on its products, shall
8 compensate the new ~~motor~~ vehicle dealer for service required of <—
9 the dealer by the manufacturer and shall provide the dealer with
10 the schedule of compensation to be paid the dealer for parts,
11 work and service, and the time allowance for the performance of
12 such work and service.

13 ~~(b) Schedule of compensation to include reasonable <—~~
14 ~~compensation. In no event shall the schedule of compensation~~
15 ~~fail to include reasonable compensation for diagnostic work,~~
16 ~~repair service and labor. Time allowances for the diagnosis and~~
17 ~~performance of warranty work and service shall be reasonable and~~
18 ~~adequate for the work to be performed. In the determination of~~
19 ~~what constitutes reasonable compensation, the principal factors~~
20 ~~to be given consideration shall be the prevailing wage rates~~
21 ~~being paid by the dealers in the community in which the dealer~~
22 ~~is doing business. The hourly labor rate paid to a dealer for~~
23 ~~warranty services shall not be less than the rate charged by the~~
24 ~~dealer for like service to nonwarranty customers for nonwarranty~~
25 ~~service and repairs at a reasonable rate.~~

26 ~~(c)~~ (B) Copy of obligation to be filed with board.--A copy <—
27 of the delivery and preparation obligations of its dealers shall
28 be filed with the board by every ~~motor~~ vehicle manufacturer and <—
29 shall constitute the dealer's only responsibility for product
30 liability as between the dealer and the manufacturer.

1 ~~(d)~~ (C) Indemnification required.--Notwithstanding the terms <—
2 of any franchise agreement, it shall be a violation for any new
3 ~~motor~~ vehicle manufacturer to fail to indemnify its franchised <—
4 dealers against any judgment for damages or settlement approved
5 in writing by the manufacturer, including, but not limited to,
6 court costs and reasonable attorneys' fees of the new ~~motor~~ <—
7 vehicle dealer, arising out of complaints, claims or lawsuits
8 including, but not limited to, strict liability, negligence,
9 misrepresentation, express or implied warranty or rescission of
10 the sale as defined in 13 Pa.C.S. § 2608 (relating to revocation
11 of acceptance in whole or in part) to the extent that the
12 judgment or settlement relates solely to the alleged defective
13 or negligent manufacture, assembly or design of new ~~motor~~ <—
14 vehicles, parts or accessories or other functions by the
15 manufacturer, beyond the control of the dealer.

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

20 (a) Unlawful acts by manufacturers.--It shall be a violation
21 for any manufacturer, factory branch, distributor, field
22 representative, officer, agent or any representative whatsoever
23 of such manufacturer, factory branch or distributor licensed
24 under this act to require, attempt to require, coerce or attempt
25 to coerce any new ~~motor~~ vehicle dealer in this Commonwealth to: <—

26 (1) Order or accept delivery of any new ~~motor~~ vehicle, <—
27 part or accessory thereof, equipment or any other commodity
28 not required by law which shall not have been voluntarily
29 ordered by the new ~~motor~~ vehicle dealer, except that this <—
30 paragraph is not intended to modify or supersede any terms or

1 provisions of the franchise requiring new ~~motor~~ vehicle <—
2 dealers to market a representative line of those ~~motor~~ <—
3 vehicles which the manufacturer or distributor is publicly
4 advertising.

5 (2) Order or accept delivery of any new ~~motor~~ vehicle <—
6 with special features, accessories or equipment not included
7 in the list price of such ~~motor~~ vehicles as publicly <—
8 advertised by the manufacturer or distributor.

9 (3) Participate monetarily in an advertising campaign or
10 contest or to purchase any promotional materials, training
11 materials, showroom or other display decorations or materials
12 at the expense of the new ~~motor~~ vehicle dealer. <—

13 (4) Enter into any agreement with the manufacturer or to
14 do any other act prejudicial to the new ~~motor~~ vehicle dealer <—
15 by threatening to terminate or cancel a franchise or any
16 contractual agreement existing between the dealer and the
17 manufacturer, except that this paragraph is not intended to
18 preclude the manufacturer or distributor from insisting on
19 compliance with the reasonable terms or provisions of the
20 franchise or other contractual agreement and notice in good
21 faith to any new ~~motor~~ vehicle dealer of the new ~~motor~~ <—
22 vehicle dealer's violation of such terms or provisions shall
23 constitute a violation of the act.

24 (5) Change the capital structure of the new ~~motor~~ <—
25 vehicle dealer or the means by or through which the new ~~motor~~ <—
26 vehicle dealer finances the operation of the dealership,
27 provided that the new ~~motor~~ vehicle dealer at all times meets <—
28 any reasonable capital standards determined by the
29 manufacturer in accordance with uniformly applied criteria,
30 and also provided that no change in the capital structure

1 shall cause a change in the principal management or have the
2 effect of a sale of the franchise without the consent of the
3 manufacturer or distributor; the consent shall not be
4 unreasonably withheld.

5 (6) Refrain from participation in the management of,
6 investment in or the acquisition of any other line of new
7 ~~motor~~ vehicle or related products. This paragraph does not <—
8 apply unless the new ~~motor~~ vehicle dealer maintains a <—
9 reasonable line of credit for each make or line of new ~~motor~~ <—
10 vehicle, the new ~~motor~~ vehicle dealer remains in compliance <—
11 with the franchise agreement and any reasonable facilities
12 requirements of the manufacturer, and no change is made in
13 the principal management of the new ~~motor~~ vehicle dealer. <—

14 (7) Prospectively assent to a release, assignment,
15 novation, waiver or estoppel which would relieve any person
16 from liability to be imposed by this act or to require any
17 controversy between a new ~~motor~~ vehicle dealer and a <—
18 manufacturer, distributor or representative to be referred to
19 any person other than the duly constituted courts of the
20 Commonwealth or the United States of America, if such
21 referral would be binding upon the new ~~motor~~ vehicle dealer. <—

22 (8) Expand, construct or significantly modify facilities
23 without assurances that the franchisor will provide a
24 reasonable supply of new ~~motor~~ vehicles within a reasonable <—
25 time so as to justify such an expansion in light of the
26 market and economic conditions.

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

30 (1) Delay, refuse or fail to deliver new ~~motor~~ vehicles <—

1 or new ~~motor~~ vehicle parts or accessories in a reasonable <—
2 time and in reasonable quantity relative to the new ~~motor~~ <—
3 vehicle dealer's facilities and sales potential after
4 acceptance of an order from a new ~~motor~~ vehicle dealer having <—
5 a franchise for the retail sale of any new ~~motor~~ vehicle sold <—
6 or distributed by the manufacturer or distributor as are
7 covered by such franchise, if such vehicle, parts or
8 accessories are publicly advertised as being available for
9 immediate delivery. There is no violation if the failure is
10 caused by acts or causes beyond the control of the
11 manufacturer.

12 (2) Unfairly discriminate among its new ~~motor~~ vehicle <—
13 dealers with respect to warranty reimbursement.

14 (3) Unreasonably withhold consent to the sale, transfer
15 or exchange of the franchise to a qualified buyer capable of
16 being licensed as a new ~~motor~~ vehicle dealer in this <—
17 Commonwealth.

18 (4) Fail to respond in writing to a request for consent
19 as specified in paragraph (3) within 60 days of receipt of a
20 written request on the forms, if any, generally utilized by
21 the manufacturer or distributor for such purposes and
22 containing the information required. Such failure to respond
23 shall be deemed to be refusal to consent to the request.

24 (5) Prevent or attempt to prevent by contract or
25 otherwise, any new ~~motor~~ vehicle dealer from changing the <—
26 executive management control of the new ~~motor~~ vehicle dealer <—
27 unless the manufacturer, having the burden of proof, can show
28 that such change of executive management will result in
29 executive management or control by a person or persons who
30 are not of good moral character or who do not meet

1 reasonable, preexisting, and, with consideration given to the
2 volume of sales and service of the dealership, uniformly
3 applied minimum business experience standards. Where the
4 manufacturer rejects a proposed change in executive
5 management control, the manufacturer shall give written
6 notice of his reasons to the dealer within 60 days of notice
7 to the manufacturer by the dealer of the proposed change;
8 otherwise the change in the executive management of the new
9 ~~motor~~ vehicle dealer shall be presumptively deemed approved. <—

10 (6) Offer to sell or lease, or to sell or lease, any new
11 ~~motor~~ vehicle to, or through, any new ~~motor~~ vehicle dealer at <—
12 a lower actual price than the actual price offered to any
13 other new ~~motor~~ vehicle dealer for the same model vehicle <—
14 similarly equipped or to utilize any device including, but
15 not limited to, sales promotion plans or programs which
16 result in such lesser actual price. The provisions of this
17 paragraph shall not apply to sales to a new ~~motor~~ vehicle <—
18 dealer for resale to any unit of the Federal Government, the
19 Commonwealth or any of its political subdivisions.

20 (7) Offer to sell or lease, or to sell or lease, any new
21 ~~motor~~ vehicle to any person, except a manufacturer's employee <—
22 at a lower actual price than the actual price offered and
23 charged to a new ~~motor~~ vehicle dealer for the same model <—
24 vehicle similarly equipped or to utilize any device which
25 results in such lesser actual price. The provisions of this
26 paragraph shall not apply to sales to a new ~~motor~~ vehicle <—
27 dealer for resale to any unit of the Federal Government, the
28 Commonwealth or any of its political subdivisions.

29 (8) Offer in connection with a sale of a new ~~motor~~ <—
30 vehicle or vehicles to the Federal Government, the

1 Commonwealth or any political subdivision thereof, any
2 discounts, refunds or any other type of inducement to any new
3 ~~motor~~ vehicle dealer without making the same offer or offers <—
4 available to all other of its new ~~motor~~ vehicle dealers <—
5 within this Commonwealth.

6 (9) Offer in connection with the sale of any new ~~motor~~ <—
7 vehicle or new ~~motor~~ vehicles to a purchaser of more than ten <—
8 new ~~motor~~ vehicles per model year, terms, discounts, refunds <—
9 or other similar inducements to that purchaser without making
10 the same offer or offers available on the same terms to all
11 other purchasers of more than ten new ~~motor~~ vehicles per <—
12 model year from its new ~~motor~~ vehicle dealers in this <—
13 Commonwealth. No manufacturer or distributor may impose or
14 enforce any restrictions against these new ~~motor~~ vehicle <—
15 dealers, their leasing, rental or fleet divisions or
16 subsidiaries that is not imposed or enforced against any
17 other similar purchaser.

18 (c) Cancelling of franchises.--Being a manufacturer, factory
19 branch, distributor, field representative, officer, agent or any
20 representative whatsoever of such ~~motor~~ vehicle manufacturer or <—
21 factory branch, 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. Not less than 60 days advance
2 notice of such termination, cancellation or failure to renew
3 shall be given the dealer prior to the effective date thereof
4 unless the nature or character of the reason for termination,
5 cancellation or failure to renew is such that the giving of such
6 notice would not be in the public interest. At any time before
7 the effective date of such termination, cancellation or failure
8 to renew, the dealer may appeal to the board for a hearing on
9 the merits, and following due notice to all parties concerned,
10 such hearing shall be promptly held. No such termination,
11 cancellation or failure to renew shall become effective until
12 final determination of the issue by the board. In the event of a
13 dealer appeal, the burden of proof shall be on the manufacturer
14 to show that such termination, cancellation or failure to renew
15 was for good cause and in good faith.

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

30 (e) Construction of section.--This section shall not be

1 construed to prevent the offering of incentive programs or other
2 discounts if such discounts are equally available to all
3 franchised ~~motor~~ vehicle dealers in this Commonwealth on a ←
4 proportionately equal basis.

5 Section 10. Grounds for disciplinary proceedings.

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

14 (1) Having had his license revoked or suspended by the
15 Commonwealth or another state based on grounds similar to
16 those which in this Commonwealth allow disciplinary
17 proceedings, in which case the record of such revocation or
18 suspension shall be conclusive evidence.

19 (2) Knowingly make any substantial misrepresentation of
20 material facts.

21 (3) Knowingly make any false promise of a character
22 likely to influence, persuade or induce the sale of a ~~motor~~ ←
23 vehicle.

24 (4) Being a ~~motor~~ vehicle dealer or salesperson, having ←
25 within three years prior to the application for or issuance
26 of a license or while his current license is in force pleaded
27 guilty, entered a plea of nolo contendere or been found
28 guilty in a court of competent jurisdiction in this or any
29 other state or Federal jurisdiction of forgery, embezzlement,
30 obtaining money under false pretenses, extortion, conspiracy

1 to defraud, bribery, odometer tampering or any other crime
2 involving moral turpitude.

3 (5) Having knowingly failed or refused to account for
4 moneys or other valuables belonging to others which have come
5 into his possession arising out of the sale of ~~motor~~ ←
6 vehicles.

7 (6) Having engaged in false, deceptive or misleading
8 advertising of ~~motor~~ vehicles. ←

9 (7) Having committed any act or engaged in conduct in
10 connection with the sale of ~~motor~~ vehicles which clearly ←
11 demonstrates incompetency.

12 (8) Having made a material misstatement in application
13 for license.

14 (9) Having set up, promoted or aided in promotion of a
15 plan by which ~~motor~~ vehicles are sold to a person for ←
16 consideration and upon the further consideration that the
17 purchaser agrees to secure one or more persons to participate
18 in the plan by respectively making a similar purchase and in
19 turn agreeing to secure one or more persons likewise to join
20 in said plan, each purchaser being given the right to secure
21 money, credits, goods or something of value, depending upon
22 the number of persons joining in the plan.

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

27 (11) Being a dealer who advertises or otherwise holds
28 out to the public that he is selling new ~~motor~~ vehicles for ←
29 which he does not hold a contract in writing with a
30 manufacturer, importer or distributor giving said dealer

1 authority to sell such ~~motor~~ vehicles. <—

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

12 (13) Failing to take immediate remedial action when the
13 dealer knows that someone in his direct employ or someone who
14 renders vehicle-related services to the dealer for
15 consideration, has unlawfully tampered with the odometer of a
16 vehicle in his care, custody or control or which has been
17 sold or exchanged by the dealer at wholesale or retail. For
18 the purpose of this paragraph, remedial action shall be
19 defined as at least reporting the incident in writing to the
20 Pennsylvania State Police or the board.

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

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

26 (16) Having had his vehicle business registration plates
27 (dealer identification number) suspended by the Department of
28 Transportation pursuant to 75 Pa.C.S. § 1374(a) (relating to
29 suspension of vehicle business registration plates). A
30 certified copy of the decision and order of the Department of

1 Transportation will constitute conclusive evidence.

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

6 (18) Willfully failing to display a license.

7 (19) Failing to obey any order of the board entered
8 pursuant to the act.

9 (20) Permitting or allowing another individual or
10 organization not licensed by the board to use that
11 individual's license for the purpose of operating in this
12 Commonwealth in a capacity for which the individual or
13 organization should have held a license.

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

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

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

22 (24) Issuing a false or fraudulent tax report or copy
23 thereof.

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

27 Section 11. Administrative liability of employer,

28 copartnership, association or corporation.

29 In the event of the revocation of the license issued to any
30 member of a partnership or to any officer of an association or

1 corporation, the license issued to a partnership, association or
2 corporation shall be revoked by the board unless, within a time
3 fixed by the board, in the case of a partnership, the connection
4 of the member whose license has been revoked shall be severed
5 and his interest in the partnership and his share in its
6 activities brought to an end, or in the case of an association
7 or corporation, the offending officer shall be discharged and
8 shall have no further participation in its activities.

9 Section 12. Reinstatement.

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

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

18 Section 13. Application for license.

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

22 (1) Name of applicant and location of principal place of
23 business.

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

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

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

30 (5) If new vehicles are to be sold, the make or makes to

1 be handled.

2 (6) A statement of the previous history, record and
3 association of the applicant and of each owner, partner,
4 officer and director, which statement shall be sufficient to
5 establish to the satisfaction of the board the reputation in
6 business of the applicant.

7 (7) A statement showing whether the applicant has
8 previously applied for a license and the result of such
9 application and whether the applicant has ever been the
10 holder of either a dealer or salesperson license which was
11 revoked or suspended.

12 (8) If the applicant is a corporation or partnership, a
13 statement showing whether any of the partners, employees,
14 officers or directors have been refused a dealer's or
15 salesperson's license or have been the holder of such license
16 which was revoked or suspended.

17 (9) A statement by the applicant that he has met all
18 facility requirements as noted herein and as required by
19 regulation.

20 (b) Contents of application; salesperson's license.--
21 Application for license as a salesperson shall be made in
22 writing to the board, signed by the applicant, setting forth the
23 following:

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

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

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

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

30 (5) The recommendation of his employer or prospective

1 employer certifying that the applicant is honest, trustworthy
2 and of good repute and recommending that a license be
3 granted. In the case of an applicant who is himself a dealer,
4 an officer of a corporation which is a dealer or a member of
5 a partnership which is a dealer, the foregoing recommendation
6 shall be made by another dealer, bank or sales finance
7 company which has personal knowledge concerning the
8 reputation and fitness of the applicant.

9 (6) A statement showing whether the applicant has
10 previously applied for a license and the result of such
11 application and whether the applicant has ever been the
12 holder of a salesperson's license which was revoked or
13 suspended or the subject of disciplinary action by this board
14 or that of any other jurisdiction.

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

18 (c) Application for license other than as a dealer or
19 salesperson.--Application for license other than as a dealer or
20 salesperson shall be made in writing to the board accompanied by
21 the required fee. The board may require, in such application or
22 otherwise, information relating to the applicant's background
23 and his financial standing, all of which may be considered by
24 the board in determining the fitness of said applicant to engage
25 in the business for which he desires to be licensed.

26 Section 14. Refusal of license.

27 The board may refuse to issue a license if the applicant has
28 committed any of the acts set forth as grounds for the
29 suspension or revocation of a license. The board may also refuse
30 to issue a license when it determines:

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

5 (2) That the applicant was previously a limited or
6 general partner, stockholder, director or officer of a
7 partnership or corporation whose license issued under the
8 authority of this act was revoked for cause and never
9 reissued or was suspended for cause and the terms of
10 suspension have not been fulfilled.

11 (3) If the applicant is a partnership or corporation,
12 that one or more of the limited or general partners,
13 stockholders, directors or officers was previously the holder
14 of a limited or general partner, stockholder, director or
15 officer of a partnership or corporation whose license issued
16 under the authority of this act was revoked for cause or was
17 suspended for cause and the terms of the suspension have not
18 been fulfilled, or that by reason of the facts and
19 circumstances touching the organization, control and
20 management of the partnership or corporation business, the
21 policy of such business will be directed, controlled or
22 managed by individuals who, by reason of their conviction of
23 violations of the provisions of this act, would be ineligible
24 for a license and that by licensing such corporation or
25 partnership, the purposes of this act would likely be
26 defeated.

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

29 If a person holding a currently valid license desires to be
30 licensed to sell for another employer, he shall make application

1 to the board for the issuance of a new license showing the name
2 of his proposed new employer. Such application shall be made on
3 a form of application prescribed by the board and shall include
4 the recommendation of his proposed new employer. The new license
5 shall be issued for the remainder of the period covered by the
6 previous license. The fee for the issuance of such changed
7 license shall be \$5.

8 Section 16. Termination of employment or business.

9 (a) Salesperson's license to be surrendered after
10 termination of employment.--Within ten days after termination of
11 employment, the dealer shall surrender that salesperson's
12 license to the board. If the license is not in the dealer's
13 possession, then it will be the responsibility of the
14 salesperson to return the license.

15 (b) Dealer's license to be surrendered after termination of
16 business.--Within ten days after termination of business
17 activities, the dealer shall surrender to the board its vehicle
18 dealer's license.

19 Section 17. Exemption from licensure and registration.

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

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

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

28 SECTION 18. LIMITATIONS ON ESTABLISHING OR RELOCATING DEALERS. <—

29 (A) ADDITIONAL OR RELOCATION OF NEW VEHICLE DEALERS.--IN THE
30 EVENT THAT A MANUFACTURER SEEKS TO ENTER INTO A FRANCHISE

1 ESTABLISHING AN ADDITIONAL NEW VEHICLE DEALER OR RELOCATING AN
2 EXISTING NEW VEHICLE DEALER WITHIN OR INTO A RELEVANT MARKET
3 AREA WHERE THE SAME LINE-MAKE IS THEN REPRESENTED, THE
4 MANUFACTURER SHALL IN WRITING FIRST NOTIFY THE BOARD AND EACH
5 NEW VEHICLE DEALER IN SUCH LINE-MAKE IN THE RELEVANT MARKET AREA
6 OF THE INTENTION TO ESTABLISH AN ADDITIONAL DEALER OR TO
7 RELOCATE AN EXISTING DEALER WITHIN OR INTO THAT MARKET AREA.
8 WITHIN 20 DAYS AFTER THE END OF ANY APPEAL PROCEDURE PROVIDED BY
9 THE MANUFACTURER, ANY SUCH NEW VEHICLE DEALER MAY FILE WITH THE
10 BOARD A PROTEST TO THE ESTABLISHING OR RELOCATING OF THE NEW
11 VEHICLE DEALER. WHEN SUCH A PROTEST IS FILED, THE BOARD SHALL
12 INFORM THE MANUFACTURER THAT A TIMELY PROTEST HAS BEEN FILED,
13 AND THAT THE MANUFACTURER SHALL NOT ESTABLISH OR RELOCATE THE
14 PROPOSED NEW VEHICLE DEALER UNTIL THE BOARD HAS HELD A HEARING,
15 NOR THEREAFTER, IF THE BOARD HAS DETERMINED THAT THERE IS GOOD
16 CAUSE FOR NOT PERMITTING THE ADDITION OR RELOCATION OF SUCH NEW
17 VEHICLE DEALER.

18 (B) NONAPPLICABILITY OF SECTION.--THIS SECTION DOES NOT
19 APPLY:

20 (1) TO THE RELOCATION OF AN EXISTING DEALER WITHIN THAT
21 DEALER'S RELEVANT MARKET AREA, PROVIDED THAT THE RELOCATION
22 NOT BE AT A SITE WITHIN FIVE MILES OF A LICENSED NEW VEHICLE
23 DEALER FOR THE SAME LINE-MAKE OF VEHICLES.

24 (2) IF THE PROPOSED NEW VEHICLE DEALER IS TO BE
25 ESTABLISHED AT OR WITHIN TWO MILES OF A LOCATION AT WHICH A
26 FORMER LICENSED NEW VEHICLE DEALER FOR THE SAME LINE-MAKE OF
27 NEW VEHICLE HAD CEASED OPERATING WITHIN THE PREVIOUS TWO
28 YEARS. FOR PURPOSES OF THIS SECTION, A FORMER VEHICLE DEALER
29 SHALL HAVE CEASED OPERATIONS ON THE DATE ON WHICH THE
30 FRANCHISE OR AGREEMENT SHALL HAVE BEEN FINALLY TERMINATED.

1 (3) TO THE RELOCATION OF AN EXISTING DEALER TO A SITE
2 THAT IS FURTHER AWAY FROM THE NEAREST DEALER OF THE SAME
3 LINE-MAKE.

4 (4) TO MOBILE HOME OR RECREATIONAL VEHICLE DEALERS.

5 (C) BOARD TO CONSIDER EXISTING CIRCUMSTANCES.--IN
6 DETERMINING WHETHER GOOD CAUSE HAS BEEN ESTABLISHED FOR NOT
7 ENTERING INTO OR RELOCATING AN ADDITIONAL NEW VEHICLE DEALER FOR
8 THE SAME LINE-MAKE, THE BOARD SHALL TAKE INTO CONSIDERATION THE
9 EXISTING CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO:

10 (1) PERMANENCY OF THE INVESTMENT OF BOTH THE EXISTING
11 AND PROPOSED NEW VEHICLE DEALERS.

12 (2) GROWTH OR DECLINE IN POPULATION AND NEW CAR
13 REGISTRATIONS IN THE RELEVANT MARKET AREA.

14 (3) EFFECT ON THE CONSUMING PUBLIC IN THE RELEVANT
15 MARKET AREA.

16 (4) WHETHER IT IS INJURIOUS OR BENEFICIAL TO THE PUBLIC
17 WELFARE FOR AN ADDITIONAL NEW VEHICLE DEALER TO BE
18 ESTABLISHED.

19 (5) WHETHER THE NEW VEHICLE DEALERS OF THE SAME LINE-
20 MAKE IN THAT RELEVANT MARKET AREA ARE PROVIDING ADEQUATE
21 COMPETITION AND CONVENIENT CUSTOMER CARE FOR THE VEHICLES OF
22 THE LINE-MAKE IN THE MARKET AREA WHICH SHALL INCLUDE THE
23 ADEQUACY OF VEHICLE SALES AND SERVICE FACILITIES, EQUIPMENT,
24 SUPPLY OF VEHICLE PARTS AND QUALIFIED SERVICE PERSONNEL.

25 (6) WHETHER THE ESTABLISHMENT OF AN ADDITIONAL NEW
26 VEHICLE DEALER WOULD INCREASE COMPETITION AND WHETHER SUCH
27 INCREASED COMPETITION WOULD BE IN THE PUBLIC INTEREST.

28 (7) THE EFFECT THE DENIAL OF RELOCATION WILL HAVE ON A
29 RELOCATING DEALER.

30 Section ~~18~~ 19. Penalties.

1 (a) Unlicensed salespersons and brokers.--Whoever engages in
2 the occupation of vehicle salesperson or who sells or acts as a
3 sales agent or broker in connection with the sale of a vehicle
4 or of a mobile home in a mobile home park, without being
5 licensed and registered as required by this act or exempted from
6 licensure or shall present or attempt to use as his own the
7 license of another or shall give any false or forged evidence of
8 any kind to the board or to any member in order to obtain a
9 license, or shall refuse upon request to furnish business
10 records, documents and files relating to practice under this
11 act, or shall otherwise violate the provisions of this act shall
12 be guilty of a summary offense and, upon conviction, shall be
13 ordered to pay a fine of \$500. A second violation of this act
14 shall constitute a summary offense and, upon conviction, the
15 violator shall be ordered to pay a fine of \$1,000. For the
16 purpose of this act the sale of each vehicle in violation of
17 this act constitutes a separate offense.

18 (b) Unlicensed manufacturers, etc.--Whoever engages in the
19 business of vehicle dealer, manufacturer, factory branch,
20 distributor, distributor branch, factory or distributor
21 representative or wholesaler without being licensed and
22 registered as required or exempted from licensure as provided,
23 or shall present or attempt to use as his own the license of
24 another or shall give any false or forged evidence of any kind
25 to the board or to any member in order to obtain a license or
26 shall refuse, upon request, to furnish business records,
27 documents and files relating to practice or shall otherwise
28 violate the provisions of this act, shall be guilty of a summary
29 offense and, upon conviction, shall be sentenced to pay a fine
30 of \$500 or any higher amount equal to double the pecuniary gain

1 derived from the offense. A second violation of this act shall
2 constitute a summary offense and, upon conviction, the violator
3 shall be ordered to pay a fine of \$1,000. For the purpose of
4 this act the sale of each vehicle in violation of this act
5 constitutes a separate offense.

6 (c) Additional remedy.--In addition to any other civil
7 remedy or criminal penalty provided for in this act, the board
8 by a vote of the majority of the authorized membership of the
9 board as provided by law, or by a vote of the majority of the
10 duly qualified and confirmed membership, may levy a civil
11 penalty of up to \$1,000 on any current licensee who violates any
12 provision of this act or on any person who engages in an
13 activity required to be licensed by this act. The board shall
14 levy this penalty only after affording the accused party the
15 opportunity for a hearing as provided in Title 2 of the
16 Pennsylvania Consolidated Statutes (relating to administrative
17 law and procedure).

18 Section ~~19~~ 20. Civil actions for violations. ←

19 (a) Action for damages.--Notwithstanding the terms,
20 provisions or conditions of any agreement or franchise or other
21 terms or provisions of any novation, waiver or other written
22 instrument, any person who is or may be injured by a violation
23 of a provision of this act or any party to a franchise who is so
24 injured in his business or property by a violation of a
25 provision of this act relating to that franchise, or any person
26 so injured because he refuses to accede to a proposal for an
27 arrangement which, if consummated, would be in violation of this
28 act, may bring an action for damages and equitable relief,
29 including injunctive relief, in any court of competent
30 jurisdiction.

1 (b) Punitive damages.--If ~~the manufacturer~~ ANY PERSON <—
2 engages in continued multiple violations of a provision or
3 provisions of this act, the court may award punitive damages in
4 addition to any other damages under this act.

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

8 Section ~~20~~ 21. Applicability of act. <—

9 (a) Persons having contacts in Pennsylvania subject to
10 act.--Any person who engages directly or indirectly in doing
11 business within the Commonwealth in connection with the offering
12 or advertising for sale or is doing business with respect to a
13 new or used ~~motor~~ vehicle sale shall be subject to the <—
14 provisions of this act and shall be subject to the jurisdiction
15 of the courts of this Commonwealth.

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

20 Section ~~21~~ 22. Fees. <—

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

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

25 (2) For dealers, \$25 for the initial registration and
26 \$15 for each biennial renewal. Each office or branch shall be
27 separately licensed and shall pay the same fees. Each used
28 car lot not immediately adjacent to the licensed premises
29 shall be issued a supplemental license for which a biennial
30 fee of \$10 shall be charged.

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

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

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

7 Section ~~22~~ 23. Disposition of fees and fines. <—

8 All civil fines and fees shall be paid into the Special
9 Augmentation Fund established by section 301 of the act of July
10 1, 1978 (P.L.700, No.124), known as the Bureau of Professional
11 and Occupational Affairs Fee Act. All criminal fines shall be
12 paid into the State Treasury for the use of the Commonwealth.

13 SECTION 24. VEHICLE SHOWS AND EXHIBITIONS. <—

14 (A) PARTICIPATION.--ANY LICENSED DEALER OR MANUFACTURER MAY
15 PARTICIPATE IN ANY APPROVED PUBLIC VEHICLE SHOW OR EXHIBITION
16 WHICH HAS BEEN SUBMITTED BY THE SHOW PROMOTER AND HAS BEEN
17 APPROVED BY THE BOARD.

18 (B) CONDITIONS FOR APPROVAL.--APPROVAL OF A SHOW OR
19 EXHIBITION BY THE BOARD SHALL REQUIRE THE SHOW PROMOTER TO MEET
20 THE FOLLOWING REQUIREMENTS:

21 (1) SUBMIT A REQUEST FOR A SHOW AT LEAST 60 DAYS IN
22 ADVANCE OF THE SHOW DATE WITH: NAME, ADDRESS AND TELEPHONE
23 NUMBER OF THE SHOW PROMOTER, NAME AND LOCATION OF THE SHOW,
24 TYPES OF VEHICLES TO BE DISPLAYED AT THE SHOW, SHOW DATES AND
25 HOURS OF OPERATION.

26 (2) SUBMIT A LIST OF THE MAXIMUM NUMBER OF PARTICIPATING
27 DEALERS AND MANUFACTURERS AND AN APPROXIMATE NUMBER OF
28 VEHICLES TO BE DISPLAYED. THIS SHALL NOT BE CONSTRUED TO
29 PROHIBIT ONE DEALER OR MANUFACTURER FROM PROMOTING AND
30 PARTICIPATING IN THEIR OWN SHOW WITH NO OTHER EXHIBITORS.

1 (3) SUBMIT THE NAME, ADDRESS AND LICENSE NUMBER OF EACH
2 PARTICIPATING DEALER AND MANUFACTURER KNOWN TO BE EXHIBITING
3 IN THE SHOW OR EXHIBIT AT LEAST 14 DAYS PRIOR TO THE DATE OF
4 THE SHOW OPENING.

5 (4) SUBMIT A CERTIFIED CHECK OR EQUIVALENT BOND MADE OUT
6 TO THE DEPARTMENT OF STATE EQUAL TO THE NUMBER OF
7 PARTICIPATING DEALERS AND MANUFACTURERS, AT THE RATE OF \$25
8 PER DEALER OR MANUFACTURER.

9 (5) SUBMIT WITHIN 14 DAYS AFTER SHOW COMPLETION, A
10 REVISED LIST OF EXHIBITING DEALERS AND MANUFACTURERS WITH
11 ADDITIONS AND DELETIONS FROM ORIGINALLY SUBMITTED LIST.

12 (6) SIGN A STATEMENT THAT THE SHOW PROMOTER WILLINGLY
13 AGREES TO ALLOW THE BOARD TO REVIEW THE FINAL LIST OF
14 EXHIBITORS AND COMPLY WITH THE FINAL BOARD DECISION THAT ALL
15 LISTED EXHIBITORS WERE PROPERLY LICENSED. IF THE BOARD FINDS
16 AN UNLICENSED DEALER IT SHALL NOTE AN EXCEPTION TO THE LIST
17 AND THE PROMOTER SHALL EXCLUDE THAT DEALER FROM THE SHOW. THE
18 BOARD SHALL THEN REQUEST A SECOND CERTIFIED CHECK EQUIVALENT
19 TO THE NUMBER OF OUT-OF-STATE DEALERS AND MANUFACTURERS, AT
20 THE RATE OF \$25 PER OUT-OF-STATE DEALER OR MANUFACTURER. UPON
21 SATISFACTION THAT ALL OBLIGATIONS OF THE SHOW PROMOTER HAVE
22 BEEN COMPLETED, THE ORIGINAL SHOW PROMOTER'S CHECK SHALL BE
23 RETURNED.

24 (C) LIMITATIONS ON FEES.--NO OTHER FEES SHALL BE CHARGED
25 LICENSED VEHICLE DEALERS AND MANUFACTURERS FOR PARTICIPATING IN
26 VEHICLE SHOWS OR EXHIBITS BY THE BOARD.

27 (D) SHOWS OR EXHIBITS ON SUNDAYS.--

28 (1) VEHICLE SHOWS OR EXHIBITS SHALL BE PERMITTED TO BE
29 OPEN ON SUNDAYS.

30 (2) NORMAL VEHICLE BUSINESS PRACTICES SHALL BE ALLOWED

1 ON SUNDAY EXCEPT THAT NO FINAL SALES CONTRACT MAY BE
2 CONSUMMATED ON A SUNDAY.

3 Section ~~23~~ 25. Savings provision. <—

4 This act shall not be deemed to repeal, suspend, modify or
5 revoke any of the provisions of Title 75 of the Pennsylvania
6 Consolidated Statutes (relating to vehicles) or of the act of
7 June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle
8 Sales Finance Act.

9 Section ~~24~~ 26. Limitations. <—

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

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

26 (C) EXEMPTION.--THIS SECTION SHALL NOT APPLY TO ANY ACTION <—
27 BY THE BOARD REGARDING A FORMAL REPRIMAND OF ANY LICENSEE, THE
28 SUSPENSION OR REVOCATION OF ANY LICENSE, THE REFUSAL TO RENEW
29 ANY LICENSE, OR THE LEVYING OF A CIVIL PENALTY OF UP TO \$1,000
30 ON ANY LICENSEE OR ON ANY UNLICENSED PERSON WHO ENGAGES IN AN

1 ACTIVITY REQUIRED TO BE LICENSED BY THIS ACT.

2 Section ~~25~~ 27. Repeals. ←

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

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

8 Section ~~26~~ 28. Expiration of terms of board members. ←

9 Persons who are members of the State Board of Motor Vehicle
10 Manufacturers, Dealers and Salesmen shall serve on said board
11 until their current terms expire or until their successors are
12 duly appointed and qualified, but no longer than six months
13 after the expiration of their terms.

14 Section ~~27~~ 29. Expiration OF ACT. ←

15 This act shall expire December 31, 1991.

16 Section ~~28~~ 30. Effective date. ←

17 This act shall take effect January 1, 1984.