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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 1454** Session of  
1983

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

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AS RE-REPORTED FROM COMMITTEE ON TRANSPORTATION, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 29, 1983

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AN ACT

1 Providing for the State Board of Vehicle Manufacturers, Dealers  
2 and Salespersons; and providing penalties.

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

25 Section 1. Short title.

26 This act shall be known and may be cited as the Board of  
27 Vehicles Act.

28 Section 2. Definitions.

29 The following words and phrases when used in this act shall  
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Agreement." A contract or franchise or any other written  
3 instrument which describes the contractual relationship between  
4 a manufacturer, distributor, importer or dealer and at least one  
5 other person.

6 "Board." The State Board of Vehicle Manufacturers, Dealers  
7 and Salespersons.

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

13 "Broker." Any person who, for a commission, compensation or  
14 other valuable consideration, engages or participates in the  
15 wholesale or retail sale in one calendar year of five or more  
16 used vehicles or any new vehicle as the agent for the buyer or  
17 seller. For the purposes of this definition, the broker need not  
18 have custody or control of the subject vehicle but shall have  
19 the authority of the buyer or seller to negotiate or conduct a  
20 transaction on behalf of the buyer or seller. This definition  
21 shall specifically include car auctions: PROVIDED, HOWEVER, THAT <—  
22 A PERSON LICENSED AS A BROKER WHO IS SOLELY ENGAGED IN THE  
23 BUSINESS OF CONDUCTING A CAR AUCTION SHALL NOT BE REQUIRED TO  
24 MEET THE FACILITIES REQUIREMENTS AS NOTED HEREIN.

25 "Bushing." The practice of increasing the selling price of a  
26 vehicle above that originally quoted the purchaser or decreasing  
27 the allowance for trade-in of a used vehicle after the purchaser  
28 has signed a purchase order or contract which is subject to  
29 subsequent acceptance by the seller. If a used vehicle is being  
30 used as the down payment and it is not to be delivered to the

1 dealer OR BROKER until delivery of the new vehicle, the used ←  
2 vehicle may be reappraised at that time if the dealer OR BROKER ←  
3 can establish that the vehicle has suffered damage or serious  
4 mechanical deterioration since date of original valuation.  
5 Reappraisal value may determine the allowance made for such used  
6 car.

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

13 "Dealer." ~~All of the following:~~ A PERSON MAY OBTAIN A ←  
14 LICENSE IN ONE OR MORE OF THE FOLLOWING AREAS:

15 (1) A person engaged in and devoting a substantial  
16 portion of time to the business of buying, selling or  
17 exchanging new and used vehicles, trailers or semitrailers on  
18 commission, compensation or other consideration, OR WHO IS AN ←  
19 IMPORTER OR DISTRIBUTOR OF NEW MOTOR VEHICLES, TRAILERS OR  
20 SEMITRAILERS WHO HOLDS A CONTRACT IN WRITING WITH A BUYER,  
21 SELLER OR MANUFACTURER OF MOTOR VEHICLES, TRAILERS AND  
22 SEMITRAILERS.

23 (2) A person engaged in and devoting a substantial  
24 portion of time to the business of buying, selling or  
25 exchanging used vehicles, tractors, trailers or semitrailers  
26 on commission, compensation or other consideration. The term  
27 includes fleet owners who engage directly in the retail sale  
28 of fleet vehicles.

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

1 exchanging mobile homes, house trailers or office trailers on  
2 commission, compensation or other consideration.

3 (4) A person engaged in and devoting a substantial  
4 portion of time to the business of buying, selling or  
5 exchanging used mobile homes, house trailers or office  
6 trailers on commission, compensation or other consideration.

7 (5) A person engaged in and devoting a substantial  
8 portion of time to the business of buying, selling or  
9 exchanging new and used recreational vehicles on commission  
10 or otherwise. RECREATIONAL VEHICLES SHALL INCLUDE MOTOR ←  
11 HOMES, HOUSE TRAILERS OR SLIDE-IN-CAMPERS.

12 (6) A person engaged in and devoting a substantial  
13 portion of his time to the business of buying, selling or  
14 exchanging used recreational vehicles on commission or  
15 otherwise.

16 "Department." The Department of State acting through the  
17 Commissioner of Professional and Occupational Affairs.

18 "Distributor." A person, resident or nonresident, who sells  
19 or distributes vehicles to dealers or who maintains distributor  
20 representatives.

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

23 "Distributor representative." A representative similarly  
24 employed by a distributor, distributor branch or wholesaler.

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

1 and other land-use regulatory ordinances.

2 "Factory branch." A branch office maintained by a  
3 manufacturer for the sale of vehicles to distributors or dealers  
4 or for directing or supervising, in whole or part, its  
5 representatives.

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

10 "Fleet owner." Any person who owns a group of 15 or more  
11 vehicles.

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

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

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

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

1 "Person." Any individual, corporation, partnership,  
2 association or other entity foreign or domestic.

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

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

19 "Retail sale" or "sale at retail." The act or attempted act  
20 of selling, bartering, exchanging or otherwise disposing of a  
21 vehicle to an ultimate purchaser.

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

30 "Vehicle." Every device which is or may be moved or drawn

1 upon a highway, except devices moved by human or animal power,  
2 those used exclusively upon rails or tracks or motorized  
3 pedalcycles.

4 "Wholesaler." A resident person who is in the business of  
5 buying, selling or exchanging vehicles to dealers.

6 Section 3. State Board of Vehicle Manufacturers, Dealers  
7 and Salespersons.

8 (a) Board.--The State Board of Vehicle Manufacturers,  
9 Dealers and Salespersons shall consist of 17 members, one of  
10 whom shall be the Commissioner of Professional and Occupational  
11 Affairs, one of whom shall be the Secretary of the Department of  
12 Transportation, or his designee, one of whom shall be the  
13 Director of Consumer Protection in the Office of Attorney  
14 General, or his designee, and the remaining 14 of whom shall be  
15 appointed by the Governor as follows:

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

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

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

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

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

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

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

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

18 (c) Quorum.--Nine members of the board shall constitute a  
19 quorum. The board shall select, from among their number, a  
20 chairman and a secretary.

21 (d) Reimbursement of expenses.--Each member of the board,  
22 excepting the Commissioner of Professional and Occupational  
23 Affairs, the Director of the Bureau of Consumer Protection in  
24 the Office of Attorney General or his designee, and the  
25 Secretary of the Department of Transportation or his designee,  
26 shall be paid traveling and other necessary expenses and per  
27 diem compensation at the rate of \$60 for each day of actual  
28 service while on board business.

29 (e) Attendance.--A member who fails to attend three  
30 consecutive meetings shall forfeit his seat unless the

1 Commissioner of Professional and Occupational Affairs, upon  
2 written request from the member, finds that the member should be  
3 excused from a meeting because of illness or the death of an  
4 immediate family member.

5 Section 4. Powers and duties of board.

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

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

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

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

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

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

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

30 (7) Keep a record showing the names and addresses of all

1 licensees licensed under this act.

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

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

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

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

25 (12) SUBMIT ANNUALLY TO THE HOUSE AND SENATE ←  
26 APPROPRIATIONS COMMITTEES, 15 DAYS AFTER THE GOVERNOR HAS  
27 SUBMITTED HIS BUDGET TO THE GENERAL ASSEMBLY, A COPY OF THE  
28 BUDGET REQUEST FOR THE UPCOMING FISCAL YEAR WHICH THE BOARD  
29 PREVIOUSLY SUBMITTED TO THE DEPARTMENT.

30 Section 5. License to engage in business.

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

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

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

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

25 (E) FACILITY REQUIREMENTS FOR DEALERS AND BROKERS.--

←

26 (1) DEALERS AND BROKERS ENGAGED IN THE BUSINESS OF  
27 BUYING, SELLING OR EXCHANGING NEW AND USED VEHICLES, TRAILERS  
28 OR SEMITRAILERS SHALL MAINTAIN A SALESROOM OR GARAGE DEVOTED  
29 PRINCIPALLY TO THE MOTOR VEHICLE BUSINESS AND AN ESTABLISHED  
30 PLACE OF BUSINESS.

1           (2) DEALERS AND BROKERS ENGAGED IN THE BUSINESS OF  
2 BUYING, SELLING OR EXCHANGING USED VEHICLES, TRAILERS OR  
3 SEMITRAILERS SHALL MAINTAIN 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 SAID DEALER OR BROKER SHALL BY WRITTEN CONTRACT HAVE  
7 AVAILABLE AT ALL TIMES TO HIM SUCH REPAIR AND SERVICING  
8 FACILITIES) AND UPON WHICH OR ADJACENT THERETO IS A BUILDING  
9 OR PORTION OF A BUILDING, OWNED OR RENTED BY SUCH PERSON,  
10 WHERE BOOKS AND RECORDS ARE KEPT.

11           (3) DEALERS AND BROKERS ENGAGED IN THE BUSINESS OF  
12 BUYING, SELLING OR EXCHANGING NEW AND USED MOBILE HOMES,  
13 HOUSE TRAILERS OR OFFICE TRAILERS SHALL MAINTAIN A MINIMUM  
14 USABLE DISPLAY AREA OF 5,000 SQUARE FEET DEVOTED PRINCIPALLY  
15 TO THE MOBILE HOME, HOUSE TRAILER OR OFFICE TRAILER BUSINESS,  
16 MAINTAIN AN ESTABLISHED PLACE OF BUSINESS AND HOLD A CONTRACT  
17 IN WRITING WITH A BUYER, SELLER OR MANUFACTURER GIVING SUCH  
18 PERSON BUYING OR SELLING RIGHTS FOR NEW MOBILE HOMES, HOUSE  
19 TRAILERS OR OFFICE TRAILERS.

20           (4) DEALERS AND BROKERS ENGAGED IN THE BUSINESS OF  
21 BUYING, SELLING OR EXCHANGING USED MOBILE HOMES, HOUSE  
22 TRAILERS OR OFFICE TRAILERS SHALL MAINTAIN A MINIMUM USABLE  
23 DISPLAY AREA OF 5,000 SQUARE FEET, ACTUALLY OCCUPIED BY SUCH  
24 PERSON, AND UPON WHICH OR ADJACENT THERETO IS A BUILDING, OR  
25 A PORTION OF A BUILDING, OWNED OR RENTED BY SUCH PERSON,  
26 WHERE HIS BOOKS AND RECORDS ARE KEPT AND WHICH IS DEVOTED  
27 PRINCIPALLY TO THE MOBILE HOME, HOUSE TRAILER OR OFFICE  
28 TRAILER BUSINESS, IN WHICH THE REPAIR OF SUCH VEHICLES IS  
29 SUBORDINATE OR INCIDENTAL TO THE BUSINESS OF BUYING, SELLING  
30 OR EXCHANGING SUCH VEHICLES AND WHO MAINTAINS AN ESTABLISHED

1 PLACE OF BUSINESS.

2 (5) DEALERS AND BROKERS ENGAGED IN THE BUSINESS OF  
3 BUYING, SELLING OR EXCHANGING NEW OR USED RECREATIONAL  
4 VEHICLES SHALL MAINTAIN AN ESTABLISHED PLACE OF BUSINESS AND  
5 A MINIMUM USABLE DISPLAY AREA OF 5,000 SQUARE FEET DEVOTED  
6 PRINCIPALLY TO THE RECREATIONAL VEHICLE BUSINESS.

7 Section 6. Biennial renewal.

8 Each license holder shall be required to renew his license  
9 biennially; as a condition precedent to biennial renewal, the  
10 license holder shall pay a biennial renewal fee and, in the case  
11 of a salesperson or manufacturer's representative, he must be  
12 presently employed with a dealer or manufacturer which has a  
13 current license. The license holder shall comply with all  
14 requirements as set forth through regulation by the board.

15 Section 7. Enforcement.

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

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

30 Any hearing on a protest by a dealer of any action by a

1 manufacturer alleged to be in violation of a provision of this  
2 act must be conducted and the final determination made within  
3 120 days after the protest is filed. Unless waived by the  
4 parties, failure to do so will be deemed the equivalent of a  
5 determination that the manufacturer acted with good cause and,  
6 in the case of a protest of a proposed establishment or  
7 relocation of a dealer under section 10, that good cause does  
8 not exist for refusing to permit the proposed additional or  
9 relocated new vehicle dealer, unless such delay is caused by  
10 acts of the manufacturer or the additional or relocating dealer.  
11 Any parties to such a hearing shall have a right of review of  
12 the decision in a court of competent jurisdiction pursuant to 2  
13 Pa.C.S. § 701 (relating to scope of subchapter). If the board  
14 determined that good cause does not exist for refusing to permit  
15 the proposed additional or relocated new vehicle dealer, and the  
16 manufacturer thereafter enters into a franchise establishing  
17 that new vehicle dealer, the manufacturer shall not be liable  
18 for damages based upon such establishment even if a court  
19 reverses the determination of the board.

20 Section 8. Warranty and predelivery obligations.

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

30 (B) SCHEDULE OF COMPENSATION TO INCLUDE REASONABLE

←

1 COMPENSATION.--IN NO EVENT SHALL THE SCHEDULE OF COMPENSATION  
2 FAIL TO INCLUDE REASONABLE COMPENSATION FOR DIAGNOSTIC WORK,  
3 REPAIR SERVICE AND LABOR. TIME ALLOWANCES FOR THE DIAGNOSIS AND  
4 PERFORMANCE OF WARRANTY WORK AND SERVICE SHALL BE REASONABLE AND  
5 ADEQUATE FOR THE WORK TO BE PERFORMED. IN THE DETERMINATION OF  
6 WHAT CONSTITUTES REASONABLE COMPENSATION, THE PRINCIPAL FACTORS  
7 TO BE GIVEN CONSIDERATION SHALL BE THE PREVAILING WAGE RATES  
8 BEING PAID BY THE DEALERS IN THE COMMUNITY IN WHICH THE DEALER  
9 IS DOING BUSINESS. THE HOURLY LABOR RATE PAID TO A DEALER FOR  
10 WARRANTY SERVICES SHALL NOT BE LESS THAN THE RATE CHARGED BY THE  
11 DEALER FOR LIKE SERVICE TO NONWARRANTY CUSTOMERS FOR NONWARRANTY  
12 SERVICE AND REPAIRS AT A REASONABLE RATE.

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

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

1 parts or accessories or other functions by the manufacturer,  
2 beyond the control of the dealer.

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

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

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

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

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

29 (4) Enter into any agreement with the manufacturer or to  
30 do any other act prejudicial to the new vehicle dealer by

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

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

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

29 (7) Prospectively assent to a release, assignment,  
30 novation, waiver or estoppel which would relieve any person

1 from liability to be imposed by this act or to require any  
2 controversy between a new vehicle dealer and a manufacturer,  
3 distributor or representative to be referred to any person  
4 other than the duly constituted courts of the Commonwealth or  
5 the United States of America, if such referral would be  
6 binding upon the new vehicle dealer.

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

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

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

26 (2) Unfairly discriminate among its new vehicle dealers  
27 with respect to warranty reimbursement.

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

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

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

23           (6) Offer to sell or lease, or to sell or lease, any new  
24 vehicle to, or through, any new vehicle dealer at a lower  
25 actual price than the actual price offered to any other new  
26 vehicle dealer for the same model vehicle similarly equipped  
27 or to utilize any device including, but not limited to, sales  
28 promotion plans or programs which result in such lesser  
29 actual price. The provisions of this paragraph shall not  
30 apply to sales to a new vehicle dealer for resale to any unit

1 of the Federal Government, the Commonwealth or any of its  
2 political subdivisions.

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

12 (8) Offer in connection with a sale of a new vehicle or  
13 vehicles to the Federal Government, the Commonwealth or any  
14 political subdivision thereof, any discounts, refunds or any  
15 other type of inducement to any new vehicle dealer without  
16 making the same offer or offers available to all other of its  
17 new vehicle dealers within this Commonwealth.

18 (9) Offer in connection with the sale of any new vehicle  
19 or new vehicles to a purchaser of more than ten new vehicles  
20 per model year, terms, discounts, refunds or other similar  
21 inducements to that purchaser without making the same offer  
22 or offers available on the same terms to all other purchasers  
23 of more than ten new vehicles per model year from its new  
24 vehicle dealers in this Commonwealth. No manufacturer or  
25 distributor may impose or enforce any restrictions against  
26 these new vehicle dealers, their leasing, rental or fleet  
27 divisions or subsidiaries that is not imposed or enforced  
28 against any other similar purchaser.

29 (c) Cancelling of franchises.--~~Being a~~ IT SHALL BE A

←

30 VIOLATION OF THIS ACT FOR ANY manufacturer, factory branch,

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

28 ~~(d) Bushing. Being a~~ (D) BUSHING.--IT SHALL BE A VIOLATION <—  
29 FOR ANY vehicle dealer OR BROKER having accepted an order of <—  
30 purchase or a contract from a buyer which offer of purchase or

1 contract is subject to subsequent acceptance by the seller, if  
2 such arrangement results in the practice of bushing. For the  
3 purpose of this subsection, bushing is defined as the practice  
4 of increasing the selling price of a car above that originally  
5 quoted the purchaser or decreasing the allowance for trade-in of  
6 a used car after the purchaser has signed a purchase order or  
7 contract which is subject to subsequent acceptance by the  
8 seller, however, if a used car is being used as the down payment  
9 and it is not to be delivered to the dealer OR BROKER until the ←  
10 delivery of the new car, the used car shall be reappraised at  
11 that time and such reappraisal value shall determine the  
12 allowance made for such used car.

13 (e) Construction of section.--This section shall not be  
14 construed to prevent the offering of incentive programs or other  
15 discounts if such discounts are equally available to all  
16 franchised vehicle dealers in this Commonwealth on a  
17 proportionately equal basis.

18 Section 10. Grounds for disciplinary proceedings.

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

27 (1) Having had his license revoked or suspended by the  
28 Commonwealth or another state based on grounds similar to  
29 those which in this Commonwealth allow disciplinary  
30 proceedings, in which case the record of such revocation or

1 suspension shall be conclusive evidence.

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

4 (3) Knowingly make any false promise of a character  
5 likely to influence, persuade or induce the sale of a  
6 vehicle.

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

16 (5) Having knowingly failed or refused to account for  
17 moneys or other valuables belonging to others which have come  
18 into his possession arising out of the sale of vehicles.

19 (6) Having engaged in false, deceptive or misleading  
20 advertising of vehicles.

21 (7) Having committed any act or engaged in conduct in  
22 connection with the sale of vehicles which clearly  
23 demonstrates incompetency.

24 (8) Having made a material misstatement in application  
25 for license.

26 (9) Having set up, promoted or aided in promotion of a  
27 plan by which vehicles are sold to a person for consideration  
28 and upon the further consideration that the purchaser agrees  
29 to secure one or more persons to participate in the plan by  
30 respectively making a similar purchase and in turn agreeing

1 to secure one or more persons likewise to join in said plan,  
2 each purchaser being given the right to secure money,  
3 credits, goods or something of value, depending upon the  
4 number of persons joining in the plan.

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

9 (11) Being a dealer OR BROKER who advertises or ←  
10 otherwise holds out to the public that he is selling new  
11 vehicles for which he does not hold a contract in writing  
12 with a manufacturer, importer or distributor giving said  
13 dealer authority to sell such vehicles.

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

24 (13) Failing to take immediate remedial action when the  
25 dealer knows that someone in his direct employ or someone who  
26 renders vehicle-related services to the dealer for  
27 consideration, has unlawfully tampered with the odometer of a  
28 vehicle in his care, custody or control or which has been  
29 sold or exchanged by the dealer at wholesale or retail. For  
30 the purpose of this paragraph, remedial action shall be

1 defined as at least reporting the incident in writing to the  
2 Pennsylvania State Police or the board.

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

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

8 (16) Having had his vehicle business registration plates  
9 (dealer identification number) suspended by the Department of  
10 Transportation pursuant to 75 Pa.C.S. § 1374(a) (relating to  
11 suspension of vehicle business registration plates). A  
12 certified copy of the decision and order of the Department of  
13 Transportation will constitute conclusive evidence.

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

18 (18) Willfully failing to display a license.

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

21 (20) Permitting or allowing another individual or  
22 organization not licensed by the board to use that  
23 individual's license for the purpose of operating in this  
24 Commonwealth in a capacity for which the individual or  
25 organization should have held a license.

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

29 (22) Failing to collect a tax or fee due the  
30 Commonwealth upon a sale of a vehicle as defined in 75

1 Pa.C.S. § 102 (relating to definitions).

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

4 (24) Issuing a false or fraudulent tax report or copy  
5 thereof.

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

9 (26) ANY VIOLATION OF THIS ACT. ←

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

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

22 Section 12. Reinstatement.

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

26 (b) Revocation.--Unless ordered to do so by a court, the  
27 board shall not reinstate the license of a person that has been  
28 revoked and such person shall be required to apply for a license  
29 AFTER A PERIOD OF FIVE YEARS in accordance with section 13 if he ←  
30 desires to practice at any time after such revocation.

1 Section 13. Application for license.

2 (a) Contents of application; dealer's OR BROKER'S license.-- <—

3 Application for license as a dealer OR BROKER shall be made in <—

4 writing to the board, signed by the applicant, setting forth the

5 following:

6 (1) Name of applicant and location of principal place of  
7 business.

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

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

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

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

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

21 (7) A statement showing whether the applicant has  
22 previously applied for a license and the result of such  
23 application and whether the applicant has ever been the  
24 holder of either a dealer, BROKER or salesperson license <—  
25 which was revoked or suspended.

26 (8) If the applicant is a corporation or partnership, a  
27 statement showing whether any of the partners, employees,  
28 officers or directors have been refused a dealer's or  
29 salesperson's license or have been the holder of such license  
30 which was revoked or suspended.

1           (9) A statement by the applicant that he has met all  
2           facility requirements as noted herein and as required by  
3           regulation.

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

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

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

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

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

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

23          (6) A statement showing whether the applicant has  
24          previously applied for a license and the result of such  
25          application and whether the applicant has ever been the  
26          holder of a salesperson's license which was revoked or  
27          suspended or the subject of disciplinary action by this board  
28          or that of any other jurisdiction.

29          (7) The application shall be made upon a form prepared  
30          by the board containing such other information as the board

1 shall require through regulation.

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

11 Section 14. Refusal of license.

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

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

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

26 (3) If the applicant is a partnership or corporation,  
27 that one or more of the limited or general partners,  
28 ~~stockholders, directors or officers was previously the holder ←~~  
29 ~~of a limited or general partner, stockholder, director or~~  
30 ~~officer of a partnership or corporation whose license issued~~

1 ~~under the authority of this act was revoked for cause or was~~  
2 STOCKHOLDERS, DIRECTORS OR OFFICERS OF THE PARTNERSHIP OR ←  
3 CORPORATION WAS PREVIOUSLY THE HOLDER OF A LICENSE ISSUED  
4 UNDER THE AUTHORITY OF THIS ACT WHICH WAS REVOKED FOR CAUSE  
5 OR WAS suspended for cause and the terms of the suspension  
6 have not 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.~~ DETERMINED BY REGULATION. ←

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 OR BROKER'S license to be surrendered after ←  
4 termination of business.--Within ten days after termination of  
5 business activities, the dealer OR BROKER shall surrender to the ←  
6 board its vehicle dealer's OR BROKER'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. Limitations on establishing or relocating dealers.

17 (a) Additional or relocation of new vehicle dealers.--In the  
18 event that a manufacturer seeks to enter into a franchise  
19 establishing an additional new vehicle dealer or relocating an  
20 existing new vehicle dealer within or into a relevant market  
21 area where the same line-make is then represented, the  
22 manufacturer shall in writing first notify the board and each  
23 new vehicle dealer in such line-make in the relevant market area  
24 of the intention to establish an additional dealer or to  
25 relocate an existing dealer within or into that market area.

26 Within 20 days after the end of any appeal procedure provided by  
27 the manufacturer, any such new vehicle dealer may file with the  
28 board a protest to the establishing or relocating of the new  
29 vehicle dealer. When such a protest is filed, the board shall  
30 inform the manufacturer that a timely protest has been filed,

1 and that the manufacturer shall not establish or relocate the  
2 proposed new vehicle dealer until the board has held a hearing,  
3 nor thereafter, if the board has determined that there is good  
4 cause for not permitting the addition or relocation of such new  
5 vehicle dealer.

6 (b) Nonapplicability of section.--This section does not  
7 apply:

8 (1) To the relocation of an existing dealer within that  
9 dealer's relevant market area, provided that the relocation  
10 not be at a site within five miles of a licensed new vehicle  
11 dealer for the same line-make of vehicles.

12 (2) If the proposed new vehicle dealer is to be  
13 established at or within two miles of a location at which a  
14 former licensed new vehicle dealer for the same line-make of  
15 new vehicle had ceased operating within the previous two  
16 years. For purposes of this section, a former vehicle dealer  
17 shall have ceased operations on the date on which the  
18 franchise or agreement shall have been finally terminated.

19 (3) To the relocation of an existing dealer to a site  
20 that is further away from the nearest dealer of the same  
21 line-make.

22 (4) To mobile home or recreational vehicle dealers.

23 (c) Board to consider existing circumstances.--In  
24 determining whether good cause has been established for not  
25 entering into or relocating an additional new vehicle dealer for  
26 the same line-make, the board shall take into consideration the  
27 existing circumstances, including, but not limited to:

28 (1) Permanency of the investment of both the existing  
29 and proposed new vehicle dealers.

30 (2) Growth or decline in population and new car

1 registrations in the relevant market area.

2 (3) Effect on the consuming public in the relevant  
3 market area.

4 (4) Whether it is injurious or beneficial to the public  
5 welfare for an additional new vehicle dealer to be  
6 established.

7 (5) Whether the new vehicle dealers of the same line-  
8 make in that relevant market area are providing adequate  
9 competition and convenient customer care for the vehicles of  
10 the line-make in the market area which shall include the  
11 adequacy of vehicle sales and service facilities, equipment,  
12 supply of vehicle parts and qualified service personnel.

13 (6) Whether the establishment of an additional new  
14 vehicle dealer would increase competition and whether such  
15 increased competition would be in the public interest.

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

18 Section 19. Penalties.

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

1 ordered to pay a fine of \$500. A second violation of this act  
2 shall constitute a summary offense and, upon conviction, the  
3 violator shall be ordered to pay a fine of \$1,000. For the  
4 purpose of this act the sale of each vehicle in violation of  
5 this act constitutes a separate offense.

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

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

1 activity required to be licensed by this act. The board shall  
2 levy this penalty only after affording the accused party the  
3 opportunity for a hearing as provided in Title 2 of the  
4 Pennsylvania Consolidated Statutes (relating to administrative  
5 law and procedure).

6 Section 20. Civil actions for violations.

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

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

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

26 ~~Section 21. Applicability of act.~~ <—

27 ~~(a) Persons having contacts in Pennsylvania subject to~~  
28 ~~act. Any person who engages directly or indirectly in doing~~  
29 ~~business within the Commonwealth in connection with the offering~~  
30 ~~or advertising for sale or is doing business with respect to a~~

1 ~~new or used vehicle sale shall be subject to the provisions of~~  
2 ~~this act and shall be subject to the jurisdiction of the courts~~  
3 ~~of this Commonwealth.~~

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

8 Section ~~22~~ 21. Fees. ←

9 (a) General rule.--All fees required under the provisions of  
10 this act shall be fixed by the board by regulation and shall be  
11 subject to review in accordance with the act of June 25, 1982  
12 (P.L.633, No.181), known as the Regulatory Review Act. If the  
13 revenues generated by fees, fines and civil penalties imposed in  
14 accordance with the provisions of this act are not sufficient to  
15 match expenditures over a two-year period, the board shall  
16 increase those fees by regulation, subject to review in  
17 accordance with the Regulatory Review Act, such that the  
18 projected revenues will meet or exceed projected expenditures.

19 (b) Increases by bureau.--If the Bureau of Professional and  
20 Occupational Affairs determines that the fees established by the  
21 board are inadequate to meet the minimum enforcement efforts  
22 required, then the bureau, after consultation with the board,  
23 shall increase the fees by regulation, subject to review in  
24 accordance with the Regulatory Review Act, such that adequate  
25 revenues are raised to meet the required enforcement effort.

26 Section ~~23~~ 22. Disposition of fees and fines. ←

27 All civil fines and fees AND ALL CRIMINAL FINES shall be paid ←  
28 into the Special Augmentation Fund established by section 301 of  
29 the act of July 1, 1978 (P.L.700, No.124), known as the Bureau  
30 of Professional and Occupational Affairs Fee Act. ~~All criminal~~ ←

1 ~~finances shall be paid into the State Treasury for the use of the~~  
2 ~~Commonwealth.~~

3 Section ~~24~~ 23. Vehicle shows and exhibitions. <—

4 (a) Participation.--Any licensed dealer or manufacturer may  
5 participate in any approved public vehicle show or exhibition  
6 which has been submitted by the show promoter and has been  
7 approved by the board.

8 (b) Conditions for approval.--Approval of a show or  
9 exhibition by the board shall require the show promoter to meet  
10 the following requirements:

11 (1) Submit a request for a show at least 60 days in  
12 advance of the show date with: name, address and telephone  
13 number of the show promoter, name and location of the show,  
14 types of vehicles to be displayed at the show, show dates and  
15 hours of operation.

16 (2) Submit a list of the maximum number of participating  
17 dealers and manufacturers and an approximate number of  
18 vehicles to be displayed. This shall not be construed to  
19 prohibit one dealer or manufacturer from promoting and  
20 participating in their own show with no other exhibitors.

21 (3) Submit the name, address and license number of each  
22 participating dealer and manufacturer known to be exhibiting  
23 in the show or exhibit at least 14 days prior to the date of  
24 the show opening.

25 ~~(4) Submit a certified check or equivalent bond made out <—~~  
26 ~~to the Department of State equal to the number of~~  
27 ~~participating dealers and manufacturers, at the rate of \$25~~  
28 ~~per dealer or manufacturer.~~

29 ~~(5) Submit within 14 days after show completion, a~~  
30 ~~revised list of exhibiting dealers and manufacturers with~~

1 ~~additions and deletions from originally submitted list.~~

2 ~~(6) Sign a statement that the show promoter willingly~~  
3 ~~agrees to allow the board to review the final list of~~  
4 ~~exhibitors and comply with the final board decision that all~~  
5 ~~listed exhibitors were properly licensed. If the board finds~~  
6 ~~an unlicensed dealer it shall note an exception to the list~~  
7 ~~and the promoter shall exclude that dealer from the show. The~~  
8 ~~board shall then request a second certified check equivalent~~  
9 ~~to the number of out of state dealers and manufacturers, at~~  
10 ~~the rate of \$25 per out of state dealer or manufacturer. Upon~~  
11 ~~satisfaction that all obligations of the show promoter have~~  
12 ~~been completed, the original show promoter's check shall be~~  
13 ~~returned.~~

14 (4) SUBMIT A CERTIFIED CHECK OR AN EQUIVALENT BOND, ←  
15 PAYABLE TO THE COMMONWEALTH OF PENNSYLVANIA, EQUAL TO THE  
16 NUMBER OF PARTICIPATING DEALERS, AT A RATE PER DEALER OR  
17 MANUFACTURER TO BE DETERMINED BY REGULATION. SAID CHECK OR  
18 BOND SHALL BE FORFEITED TO THE COMMONWEALTH, BY THE PROMOTER,  
19 FOR NONCOMPLIANCE WITH THIS SECTION.

20 (5) SIGN A STATEMENT THAT THE SHOW PROMOTER AGREES TO  
21 ALLOW THE BOARD TO REVIEW THE LIST OF EXHIBITORS AND WARRANTS  
22 TO THE BOARD THAT ALL COMMONWEALTH EXHIBITORS ARE PROPERLY  
23 LICENSED. IF THE BOARD DETERMINES A DEALER OR MANUFACTURER IS  
24 NOT LICENSED, IT SHALL NOTE AN EXCEPTION TO THE LIST AND THE  
25 PROMOTER SHALL EXCLUDE THE DEALER OR MANUFACTURER FROM THE  
26 SHOW.

27 (6) SUBMIT WITHIN 14 DAYS AFTER SHOW COMPLETION, A FINAL  
28 LIST OF THE ACTUAL DEALERS AND MANUFACTURERS PARTICIPATING IN  
29 THE SHOW. THE BOARD SHALL THEN REQUEST A SECOND CERTIFIED  
30 CHECK EQUIVALENT TO THE NUMBER OF OUT-OF-STATE DEALERS AND

1 MANUFACTURERS AT THE RATE PER OUT-OF-STATE DEALER OR  
2 MANUFACTURER TO BE DETERMINED BY REGULATION.

3 (7) UPON SATISFACTION THAT ALL OBLIGATIONS OF THE SHOW  
4 PROMOTER, PURSUANT TO THIS SECTION, HAVE BEEN COMPLETED, THE  
5 ORIGINAL CHECK OR BOND SHALL BE RETURNED TO THE PROMOTER.

6 (c) Limitations on fees.--No other fees shall be charged  
7 licensed vehicle dealers and manufacturers for participating in  
8 vehicle shows or exhibits by the board.

9 (d) Shows or exhibits on Sundays.--

10 (1) Vehicle shows or exhibits shall be permitted to be  
11 open on Sundays.

12 (2) Normal vehicle business practices shall be allowed  
13 on Sunday except that no final sales contract may be  
14 consummated on a Sunday.

15 Section ~~25~~ 24. Savings provision. <—

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

21 ~~Section 26. Limitations.~~ <—

22 ~~(a) Two year statute of limitation. Actions arising out of~~  
23 ~~any provision of this act shall be commenced within a two year~~  
24 ~~period of the accrual of the cause of action. If a person liable~~  
25 ~~hereunder conceals the cause of action from the knowledge of the~~  
26 ~~person entitled to bring it, the period prior to the discovery~~  
27 ~~of his cause of action by the person entitled shall be excluded~~  
28 ~~in determining the time limited for the commencement of the~~  
29 ~~action.~~

30 ~~(b) One year statute of limitation. If a cause of action~~

1 ~~accrues during the pendency of any civil, criminal or~~  
2 ~~administrative proceeding against a person brought by the~~  
3 ~~Federal Government, or any of its agencies under the antitrust~~  
4 ~~laws, the Federal Trade Commission Act, or any other Federal~~  
5 ~~act, or the laws as to franchising, actions may be commenced~~  
6 ~~within one year after the final disposition of such civil,~~  
7 ~~criminal or administrative proceeding.~~

8 ~~(c) Exemption. This section shall not apply to any action~~  
9 ~~by the board regarding a formal reprimand of any licensee, the~~  
10 ~~suspension or revocation of any license, the refusal to renew~~  
11 ~~any license, or the levying of a civil penalty of up to \$1,000~~  
12 ~~on any licensee or on any unlicensed person who engages in an~~  
13 ~~activity required to be licensed by this act.~~

14 SECTION 25. REESTABLISHMENT OF AGENCY. <—

15 THIS ACT, WITH RESPECT TO THE STATE BOARD OF MOTOR VEHICLE  
16 MANUFACTURERS, DEALERS AND SALESMEN, SHALL CONSTITUTE THE  
17 LEGISLATION REQUIRED TO REESTABLISH AN AGENCY PURSUANT TO THE  
18 ACT OF DECEMBER 22, 1981 (P.L.508, NO.142), KNOWN AS THE SUNSET  
19 ACT.

20 Section ~~27~~ 26. Repeals. <—

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

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

26 Section ~~28~~ 27. Expiration of terms of board members. <—

27 Persons who are members of the State Board of Motor Vehicle  
28 Manufacturers, Dealers and Salesmen shall serve on said board  
29 until their current terms expire or until their successors are  
30 duly appointed and qualified, but no longer than six months

1 after the expiration of their terms.

2 ~~Section 27. Expiration of act.~~

<—

3 ~~This act shall expire December 31, 1991.~~

4 Section 28. Effective date.

<—

5 This act shall take effect January 1, 1984.