

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 921 Session of
2009

INTRODUCED BY TOMLINSON, ERICKSON, BAKER, BOSCOLA, RAFFERTY,
KASUNIC, M. WHITE, ORIE, PIPPY, WOZNIAK, GREENLEAF,
WASHINGTON, MELLOW, LOGAN, FERLO, WARD, DINNIMAN, FONTANA,
ALLOWAY, STOUT AND STACK, JUNE 4, 2009

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, AS AMENDED, JUNE 9, 2009

AN ACT

1 Amending the act of December 22, 1983 (P.L.306, No.84), entitled
2 "An act providing for the State Board of Vehicle
3 Manufacturers, Dealers and Salespersons; and providing
4 penalties," providing for the definitions of "dual" or
5 "dualing" and "line-make"; further providing for mediation
6 and arbitration, for unlawful acts by manufacturers or
7 distributors and for manufacturer or distributor repurchase
8 of inventory and equipment.

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

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

14 Section 2. Definitions.

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

18 * * *

19 "Dual" or "dualing." A new vehicle dealership having two or

1 more line-makes of new vehicles located in the same dealership
2 facilities.

3 * * *

4 "Line-make." Groups of vehicles that are offered for sale,
5 lease or distribution under a common name, trademark, service
6 mark or brand name of the manufacturer or distributor of those
7 same vehicles.

8 * * *

9 Section 2. Section 11 of the act, added April 19, 1996
10 (P.L.104, No.27), is amended to read:

11 Section 11. Mediation and arbitration.

12 (a) Mediation of disputes between licensees.--

13 (1) A dealer or distributor may not file a complaint,
14 petition or protest or bring an action in a court of
15 competent jurisdiction against a manufacturer or distributor
16 based on an alleged violation of this act or in a protest
17 action under this act regarding an establishment, relocation
18 or termination of a franchise agreement unless the dealer or
19 distributor serves a demand for mediation upon the
20 manufacturer or distributor before or contemporaneous with
21 the filing of the complaint, petition or protest or the
22 bringing of an action. A demand for mediation shall be in
23 writing and served upon the manufacturer or distributor by
24 certified mail at an address designated for that manufacturer
25 or distributor within records of the dealer or distributor.
26 The demand for mediation shall contain a brief statement of
27 the dispute and the relief sought by the dealer or
28 distributor filing the demand.

29 (2) Within 20 days after the date a demand for mediation
30 is served, the parties shall mutually select an independent

1 mediator and meet with that mediator for the purpose of
2 attempting to resolve the dispute. The meeting place shall be
3 in this Commonwealth in a location selected by the mediator.
4 The mediator may extend the date of the meeting for good
5 cause shown by either party or upon stipulation of both
6 parties.

7 (3) The service of a demand for mediation under
8 paragraph (1) shall stay the time for the filing of any
9 complaint, petition, protest or action under this act until
10 representatives of both parties have met with a mutually
11 selected mediator for the purpose of attempting to resolve
12 the dispute. If a complaint, petition, protest or action is
13 filed before the meeting, the board or court shall enter an
14 order suspending the proceeding or action until the meeting
15 has occurred and may, upon written stipulation of all parties
16 to the proceeding or action that they wish to continue to
17 mediate under this subsection, enter an order suspending the
18 proceeding or action for as long a period as the board or
19 court considers appropriate. A suspension order issued under
20 this paragraph may be revoked upon motion of any party or
21 upon motion of the board or the court.

22 (4) The board shall encourage dealers, manufacturers and
23 distributors to establish, maintain and administer a panel of
24 mediators who have the character, ability and training to
25 serve as mediators and who have knowledge of the vehicle
26 industry.

27 (5) Mandatory mediation under this section shall not be
28 required of [manufacturers,] any of the following:

29 (i) A dealer seeking to dual two or more franchises
30 or a dealer seeking a relocation involving a request to

1 dual two or more franchises unless another dealer of the
2 same line-make has a right to protest the proposed
3 relocation under section 27.

4 (ii) Manufacturers, distributors or dealers of
5 motorcycles.

6 (b) Arbitration of disputes between licensees.--After a
7 dispute arises, the licensees may voluntarily agree to submit a
8 dispute arising under this act pertaining to a complaint,
9 petition, protest or action to binding or nonbinding
10 arbitration. Any arbitration proceeding shall be voluntary,
11 initiated by serving a written demand for arbitration on the
12 other party, and shall be conducted under the provisions of 42
13 Pa.C.S. Ch. 73 Subch. A (relating to statutory arbitration) and
14 administered by representatives of dealers, manufacturers or
15 distributors.

16 (c) Immunity and presumption of good faith by mediators and
17 arbitrators.--A mediator or arbitrator is immune from civil
18 liability for any good faith act or omission within the scope of
19 the mediator's or arbitrator's performance of his powers and
20 duties under this section. Every act or omission of a mediator
21 or arbitrator is presumed to be a good faith act or omission.
22 This presumption may be overcome only by clear and convincing
23 evidence.

24 Section 3. Section 12 of the act, amended October 18, 2000,
25 (P.L.577, No.75), is amended to read:

26 Section 12. Unlawful acts by manufacturers or distributors.

27 (a) Unlawful coercive acts.--It shall be a violation for any
28 manufacturer, factory branch, distributor, field representative,
29 officer, agent or any representative whatsoever of such
30 manufacturer, factory branch or distributor licensed under this

1 act to require, attempt to require, coerce or attempt to coerce
2 any new vehicle dealer in this Commonwealth to:

3 (1) Order or accept delivery of any new vehicle, part or
4 accessory thereof, equipment or any other commodity not
5 required by law which shall not have been voluntarily ordered
6 by the new vehicle dealer, except that this paragraph is not
7 intended to modify or supersede any terms or provisions of
8 the franchise requiring new vehicle dealers to market a
9 representative line of those vehicles which the manufacturer
10 or distributor is publicly advertising.

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

15 (3) Participate monetarily in an advertising campaign or
16 contest or to purchase unnecessary or unreasonable quantities
17 of any promotional materials, training materials, showroom or
18 other display decorations or materials at the expense of the
19 new vehicle dealer.

20 (4) Enter into any agreement with the manufacturer or to
21 do any other act prejudicial to the new vehicle dealer by
22 threatening to terminate or not renew a franchise or any
23 contractual agreement existing between the dealer and the
24 manufacturer or distributor, except that this paragraph is
25 not intended to preclude the manufacturer or distributor from
26 insisting on compliance with the reasonable terms or
27 provisions of the franchise or other contractual agreement
28 and notice in good faith to any new vehicle dealer of the new
29 vehicle dealer's violation of such terms or provisions shall
30 not constitute a violation of the act.

1 (5) Change the capital structure of the new vehicle
2 dealer or the means by or through which the new vehicle
3 dealer finances the operation of the dealership, provided
4 that the new vehicle dealer at all times meets any reasonable
5 capital standards determined by the manufacturer or
6 distributor in accordance with uniformly applied criteria,
7 and also provided that no change in the capital structure
8 shall cause a change in the principal management or have the
9 effect of a sale of the franchise without the consent of the
10 manufacturer or distributor. The consent shall be granted or
11 denied within 60 days of receipt of a written request from
12 the new vehicle dealer.

13 (6) (i) Refrain from participation in the management
14 of, investment in or the acquisition of any other line of
15 new vehicle or related products. This paragraph does not
16 apply unless the new vehicle dealer maintains a
17 reasonable line of credit for each make or line of new
18 vehicle, the new vehicle dealer remains in compliance
19 with the reasonable terms of the franchise agreement and
20 any reasonable facilities requirements of the
21 manufacturer or distributor, and no change is made in the
22 principal management of the new vehicle dealer. The
23 reasonable facilities requirements shall not include any
24 requirement that a new vehicle dealer establish or
25 maintain exclusive facilities, personnel or display space
26 when such requirements or any of them would be
27 unreasonable in light of economic conditions and would
28 not otherwise be justified by reasonable business
29 considerations. [Before the addition of a line-make to
30 the dealership facilities, the new vehicle dealer shall

1 first request the consent of the manufacturer or
2 distributor if required by the franchise agreement. Any
3 decision of the manufacturer or distributor with regard
4 to dualing of two or more franchises shall be rendered
5 within 60 days of receipt of a written request from the
6 new vehicle dealer. Failure on the part of the
7 manufacturer or distributor to timely respond to a
8 dualing request shall be deemed to be an approval of the
9 new vehicle dealer's request. No automobile, motorcycle
10 or truck manufacturer or distributor shall limit or
11 restrict the addition of a line-make to the dealership
12 facilities where the new vehicle dealer maintains a
13 reasonable line of credit for each make or line of new
14 vehicle and the new vehicle dealer remains in compliance
15 with the reasonable terms of the franchise agreement and
16 any reasonable facilities requirements of an automobile,
17 motorcycle or truck manufacturer or distributor.]

18 (ii) Nothing in this paragraph shall permit the
19 relocation and addition of a line-make to the dealership
20 facilities without the new vehicle dealer providing
21 written certification to the manufacturer or distributor
22 that the new vehicle dealer, with the addition of a line-
23 make by the new vehicle dealer, will maintain a
24 reasonable line of credit for each make or line of new
25 vehicle and the new vehicle dealer will remain in
26 compliance with the reasonable terms of the franchise
27 agreement and any reasonable facilities requirements of
28 the manufacturer or distributor, excluding any exclusive
29 facility or nondualing requirements. Any objection by the
30 manufacturer or distributor with regard to the relocation

1 and dualing of two or more franchises shall be delivered
2 to the dealer within ~~15~~ 30 days of receipt of the written ←
3 certification from the new vehicle dealer. Failure on the
4 part of the manufacturer or distributor to timely respond
5 to a relocation and dualing certification shall be deemed
6 to be an approval of the new vehicle dealer's
7 certification notice of relocation and dualing of two or
8 more franchises. The manufacturer or distributor shall
9 execute and deliver a franchise reflecting the relocated
10 address of the dealership facilities to the new vehicle
11 dealer within 30 days of the date of the deemed approval.

12 (iii) A dealer may file a complaint, petition or
13 protest, or bring an action in a court of competent
14 jurisdiction against a manufacturer or distributor, based
15 on a denial of a request by a dealer to relocate and dual
16 two or more franchises without first going through
17 mediation required under section 11. If a relocation and
18 dualing denial protest is filed with the board, a hearing
19 shall be held within 45 days of the protest's filing and
20 a final determination issued by the board within 90 days
21 of the protest filing. The burden of proof shall be on
22 the manufacturer or distributor to show that the
23 relocation and dualing is unreasonable. No automobile,
24 motorcycle or truck manufacturer or distributor may limit
25 or restrict the addition of a line-make to the dealership
26 facilities if the new vehicle dealer maintains a
27 reasonable line of credit for each make or line of new
28 vehicle and the new vehicle dealer remains in compliance
29 with the reasonable terms of the franchise agreement and
30 any reasonable facilities requirements of an automobile,

1 motorcycle or truck manufacturer or distributor.
2 Notwithstanding this subparagraph, this paragraph shall
3 apply if the dealer seeks to dual two or more line-makes
4 and no relocation will occur, but this subparagraph shall
5 not impair the rights of another dealer of the same line-
6 make to protest a proposed relocation under section 27.

7 (7) Prospectively assent to a release, assignment,
8 novation, waiver or estoppel which would relieve any person
9 from liability to be imposed by this act or to require any
10 controversy between a new vehicle dealer and a manufacturer,
11 distributor or representative to be referred to any person
12 other than the duly constituted courts of the Commonwealth or
13 the United States of America, if such referral would be
14 binding upon the new vehicle dealer. A dealer and the
15 manufacturer, distributor or representative, by themselves or
16 through their respective counsel, are permitted to agree to
17 execute a written agreement or to arbitrate in a binding or
18 nonbinding manner after a controversy arises.

19 (8) Expand, construct or significantly modify facilities
20 without assurances that the manufacturer or distributor will
21 provide a reasonable supply of new vehicles within a
22 reasonable time so as to justify such an expansion in light
23 of the market and economic conditions [or require a separate
24 facility for the sale or service of a line-make of a new
25 vehicle if the market and economic conditions do not clearly
26 justify the separate facility].

27 (8.1) Unreasonably expand, construct or significantly
28 modify facilities in light of the market and economic
29 conditions or require a separate facility for the sale or
30 service of a line-make of a new vehicle if the market and

1 economic conditions do not clearly justify the separate
2 facility.

3 (9) Agree as a condition to granting or renewing a
4 franchise to waive, limit or disclaim a right that the dealer
5 may have to protest the establishment or relocation of
6 another vehicle dealer in the relevant market area as
7 provided in section 27, unless such agreement is voluntary.

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

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

26 (2) Unfairly discriminate among its new vehicle dealers
27 with respect to warranty, recall, service contract or any
28 other service required by the manufacturer or distributor
29 with regard to labor or parts reimbursement.

30 (3) Unreasonably withhold consent to the sale, transfer

1 or exchange of the franchise to a qualified buyer capable of
2 being licensed as a new vehicle dealer in this Commonwealth
3 who meets the manufacturer's or distributor's reasonable
4 requirements for appointment as a dealer.

5 (4) [Arbitrarily and capriciously] Unreasonably withhold
6 consent to the relocation of an existing new vehicle dealer.
7 If the relocation involves dualing of two or more franchises,
8 the requirements of subsection (a)(6)(ii) and (iii) shall
9 apply and paragraph (5) shall not apply.

10 (5) Fail to respond in writing to a request for consent
11 as specified in paragraphs (3) and (4) within 60 days of
12 receipt of a written request on the forms, if any, generally
13 utilized by the manufacturer or distributor for such purposes
14 and containing the information required. The failure to
15 respond within the time period set forth in this paragraph
16 shall be deemed to be approval of the request, and the
17 manufacturer or distributor shall execute and deliver a
18 franchise to the applicant within 30 days of the expiration
19 of this time period. A manufacturer or distributor shall
20 acknowledge in writing to the applicant the receipt of the
21 forms, and, if the manufacturer or distributor requires
22 additional information to complete its review, the
23 manufacturer or distributor shall notify the applicant within
24 15 days of the receipt of the forms. If the manufacturer or
25 distributor fails to request additional information from the
26 applicant within 15 days after receipt of the initial forms,
27 the 60-day time period for approval shall be deemed to run
28 from the initial receipt date. Otherwise, the 60-day time
29 period for approval shall run from receipt of the
30 supplemental requested information. In no event shall the

1 total time period for approval exceed 75 days from the date
2 of the receipt of the initial forms.

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

20 (7) Offer in connection with a sale of a new vehicle or
21 vehicles to the Federal Government, the Commonwealth or any
22 political subdivision thereof, any discounts, refunds or any
23 other type of inducement to any new vehicle dealer without
24 making the same offer or offers available to all other of its
25 new vehicle dealers within this Commonwealth. This paragraph
26 shall not be construed to prevent the offering of incentive
27 programs or other discounts if the discounts are equally
28 available to all franchised vehicle dealers in this
29 Commonwealth on a proportionally equal basis.

30 (8) Fail to indemnify its franchised dealers,

1 notwithstanding the terms of any franchise agreement, against
2 any judgment for damages or settlement approved in writing by
3 the manufacturer or distributor, including, but not limited
4 to, court costs and reasonable attorney fees of the new
5 vehicle dealer, arising out of complaints, claims or
6 lawsuits, including, but not limited to, strict liability,
7 negligence, misrepresentation, express or implied warranty or
8 rescission of the sale as defined in 13 Pa.C.S. § 2608
9 (relating to revocation of acceptance in whole or in part) to
10 the extent that the judgment or settlement relates solely to
11 the alleged defective or negligent functions by the
12 manufacturer or distributor beyond the control of the dealer.

13 (9) Sell or exchange with a second or final stage
14 manufacturer, retail consumer or end user except through a
15 licensed new vehicle dealer. This paragraph shall not apply
16 to manufacturer or distributor sales of new vehicles to the
17 Federal Government, charitable organizations and employees of
18 the manufacturer.

19 (10) (i) Modify a franchise during the term of the
20 franchise or upon its renewal if the modification
21 substantially and adversely affects the new vehicle
22 dealer's rights, obligations, investment or return on
23 investment without giving 60 days' written notice of the
24 proposed modification to the new vehicle dealer unless
25 the modification is required by law, court order or the
26 board. Within the 60-day notice period, the new vehicle
27 dealer may file with the board and serve notice upon the
28 manufacturer or distributor a protest requesting a
29 determination of whether there is good cause for
30 permitting the proposed modification. The board shall

1 promptly schedule a hearing and decide the matter within
2 180 days from the date the protest is filed. Multiple
3 protests pertaining to the same proposed modification
4 shall be consolidated for hearing. The proposed
5 modification shall not take effect pending the
6 determination of the matter. In determining whether there
7 is good cause for permitting a proposed modification, the
8 board shall consider any relevant factors, including, but
9 not limited to:

10 (A) The reasons for the proposed modification.

11 (B) Whether the proposed modification is applied
12 to or affects all new vehicle dealers in a
13 nondiscriminatory manner.

14 (C) Whether the proposed modification will have
15 a substantial and adverse effect upon the new vehicle
16 dealer's investment or return on investment.

17 (D) Whether the proposed modification is in the
18 public interest.

19 (E) Whether the proposed modification is
20 necessary to the orderly and profitable distribution
21 of products by the manufacturer or distributor.

22 (F) Whether the proposed modification is offset
23 by other modifications beneficial to the new vehicle
24 dealer.

25 (ii) This paragraph shall not apply to recreational
26 vehicle manufacturers, distributors or dealers.

27 (11) Fail or refuse to offer to its new vehicle dealers
28 all new model vehicles manufactured for that line-make
29 franchise or require any of its new vehicle dealers to pay an
30 unreasonable fee, unreasonably remodel or renovate the new

1 vehicle dealer's existing facilities, unreasonably purchase
2 or construct a new facility, unreasonably purchase parts,
3 supplies, tools, equipment, operational services, other
4 merchandise or unreasonably participate in training programs
5 in order to receive any new model vehicles, parts or
6 accessories. It shall not be a violation of this paragraph if
7 the manufacturer or distributor fails to supply new vehicle
8 dealers with model vehicles, parts or accessories due to
9 circumstances beyond the control of the manufacturer or
10 distributor, including, but not limited to, strike or labor
11 difficulty, shortage of materials, freight embargo or
12 temporary lack of capacity.

13 (12) Operate a system for the allocation of new vehicles
14 which is not reasonable or fair to a new vehicle dealer. Upon
15 the written request of any of its new vehicle dealers, a
16 manufacturer or distributor shall disclose to the new vehicle
17 dealer the method on which new vehicles are allocated among
18 the new vehicle dealers of the same line-make. The
19 manufacturer distributor has the burden of establishing the
20 fairness of its allocation.

21 (13) Own, operate or control, either directly or
22 indirectly, any vehicle warranty facility. Nothing in this
23 subsection shall prohibit any manufacturer or distributor
24 from owning, operating or controlling any warranty facility
25 for warranty repairs on vehicles owned or operated by the
26 manufacturer or distributor.

27 (14) Compel a dealer through a finance subsidiary of the
28 manufacturer or distributor to agree to unreasonable
29 operating requirements or to directly or indirectly terminate
30 a new vehicle dealer through the actions of a finance

1 subsidiary of the manufacturer or distributor. This paragraph
2 shall not limit the right of a financing entity to engage in
3 business practices in accordance with the trade of retail or
4 wholesale vehicle financing.

5 (15) Use any subsidiary corporation, affiliated
6 corporation or any other controlled corporation, partnership,
7 association, entity or person to accomplish what would
8 otherwise be illegal conduct under this act on the part of
9 the manufacturer or distributor.

10 (16) Release to any third party any customer information
11 which has been provided by the new vehicle dealer to the
12 manufacturer or distributor if the customer objects in
13 writing to releasing the information, unless the information
14 is necessary for the manufacturer or distributor to meet its
15 obligations to customers or new vehicle dealers under
16 requirements imposed by Federal or State law.

17 (17) Require or coerce or attempt to require or coerce a
18 new vehicle dealer to pay attorney fees of the manufacturer
19 or distributor related to hearings and appeals brought under
20 this act.

21 (18) Vary the price charged to any of its new vehicle
22 dealers, which has the effect of causing a difference in the
23 price of any similarly equipped new vehicle to its new
24 vehicle dealers or to the ultimate purchaser. This paragraph
25 shall not be construed to prevent the offering of incentive
26 programs or other discounts if the incentive or discounts are
27 available to all competing new vehicle dealers of the same
28 line-make in this Commonwealth on a proportionately equal
29 basis.

30 (c) Restriction on ownership of dealer.--

1 (1) Except as otherwise provided in this subsection, a
2 manufacturer or distributor shall not:

3 (i) own or hold an interest, other than a passive,
4 minority interest in a publicly traded dealer held for
5 investment purposes, in a dealer licensed under this act
6 which is engaging in the business of buying, selling or
7 exchanging vehicles; or

8 (ii) operate or control a dealer licensed under this
9 act which is engaging in the business of buying, selling
10 or exchanging vehicles.

11 (2) A manufacturer or distributor may own or hold an
12 interest in a dealer or otherwise operate or control a dealer
13 for a period not to exceed 12 months from the date the
14 manufacturer or distributor acquires an interest in the
15 dealer if:

16 (i) The person from whom the manufacturer or
17 distributor acquired the dealer was a franchised dealer.

18 (ii) The dealer is for sale by the manufacturer or
19 distributor at a reasonable price and on reasonable terms
20 and conditions.

21 (3) On a showing by a manufacturer or distributor of
22 good cause, the board may extend the time limit set forth in
23 paragraph (2). An extension under this paragraph may not
24 exceed 12 months. Where an extension under this paragraph is
25 sought, the manufacturer or distributor shall provide notice
26 delivered 30 days before the extension request is filed with
27 the board to all the same line-make dealers within a ten-mile
28 radius of the manufacturer or distributor owned, operated or
29 controlled dealer. An application for an extension is subject
30 to protest by a dealer of the same line-make who is within

1 the ten-mile radius of the manufacturer or distributor owned,
2 operated or controlled dealer.

3 (4) For the primary purpose of broadening the diversity
4 of its dealer body and enhancing opportunities for qualified
5 persons who are part of a group who have historically been
6 underrepresented in its dealer body or other qualified
7 persons who lack the resources to purchase a dealer outright,
8 a manufacturer or distributor may temporarily own an interest
9 in a dealer if the manufacturer's or distributor's
10 participation in the dealer is in a bona fide relationship
11 with a franchised dealer who:

12 (i) At or prior to the time the prospective dealer
13 takes an equity interest in the dealer, the prospective
14 dealer is obligated to make a significant investment in
15 the dealer, subject to loss.

16 (ii) Has an ownership interest in the dealer.

17 (iii) Operates the dealer under a written agreement
18 to acquire full ownership of the dealer within a
19 reasonable time and under reasonable terms and
20 conditions.

21 (5) A manufacturer or distributor shall not unfairly
22 discriminate or compete in terms of any sales, service or
23 operational activities with a new vehicle dealer of the same
24 line-make when a manufacturer or distributor operates a new
25 vehicle dealer under this subsection.

26 (6) A manufacturer may own, directly or indirectly, an
27 interest in an entity that owns, operates or controls a motor
28 vehicle dealership trading solely in motor vehicles having a
29 gross vehicle weight less than 8,500 pounds that are of the
30 same line-make franchised by the manufacturer, provided that

1 each of the following conditions are met:

2 (i) All of the motor vehicle dealerships selling
3 such manufacturer's motor vehicles in this Commonwealth
4 trade exclusively in the manufacturer's line-make.

5 (ii) All of the manufacturer's franchise agreements
6 confer rights on the dealer of the line-make to develop
7 and operate, within a defined geographic territory or
8 area, as many dealership facilities as the dealer and
9 manufacturer shall agree are appropriate.

10 (iii) Not fewer than half of the dealers of the
11 line-make within this Commonwealth own and operate two or
12 more dealership facilities in the geographic territory or
13 area covered by the franchise agreement with the
14 manufacturer.

15 (iv) During any period in which the manufacturer has
16 such an ownership interest, the manufacturer has no more
17 than 12 franchise agreements with new motor vehicle
18 dealers licensed by the board to do business within this
19 Commonwealth.

20 (v) Except as otherwise permitted under other
21 provisions of this act, the manufacturer does not acquire
22 or hold, either directly or indirectly, an ownership
23 interest of more than 45% in any motor vehicle dealership
24 that the manufacturer did not already own, directly or
25 indirectly, as of the effective date of this subsection.

26 (vi) As of the effective date of this subsection,
27 the manufacturer shall have continuously owned, directly
28 or indirectly, for a period of not less than 18 months,
29 one or more new motor vehicle dealerships in this
30 Commonwealth of the same line-make as the manufacturer.

1 (d) Applicability.--

2 (1) Subsections (b)(11) through (17) and (c) shall not
3 apply to manufacturers, distributors or dealers of
4 manufactured housing or recreational vehicles.

5 (2) Subsections (b)(13) and (15) and (c) shall not apply
6 to the ownership or activities of a manufacturer in the
7 operation of a licensed dealer or a licensed dealer that
8 fulfills the following conditions:

9 (i) The manufacturer maintains an ownership interest
10 in, operates or controls a licensed dealer whose primary
11 business purpose is the rental of vehicles.

12 (ii) Vehicles sold by the licensed dealer primarily
13 engaged in the business of rental vehicles are limited to
14 those vehicles used for rental purposes or vehicles
15 obtained in trade for such vehicles.

16 (iii) Any warranty repairs are limited to those
17 repairs conducted on the vehicles used in the vehicle
18 rental business or vehicles sold by the licensed dealer.

19 Section 4. Section 17 of the act, added April 19, 1996
20 (P.L.104, No.27), is amended to read:

21 Section 17. Manufacturer or distributor repurchase of inventory
22 and equipment.

23 (a) Return of property for repurchase.--A new vehicle dealer
24 shall return property, including, but not limited to, vehicle
25 inventory, parts, equipment, tools and signs, as permitted under
26 this section or as set forth in the franchise agreement, to the
27 manufacturer or distributor within 90 days of the effective date
28 of any termination or nonrenewal of a franchise or upon a
29 termination or cessation of a part of a manufacturer's or
30 distributor's business operations throughout the United States

1 which is not part of any change in ownership, operation or
2 control of all or any part of the manufacturer's or
3 distributor's business under section 14. The manufacturer or
4 distributor shall supply the new vehicle dealer with
5 instructions on the method by which the new vehicle dealer must
6 return the property to the manufacturer or distributor. Within
7 60 days of tender of the property to the manufacturer or
8 distributor, the manufacturer or distributor, including medium
9 and heavy-duty truck component and engine manufacturers or
10 distributors who provide integral parts of vehicles or provide
11 major components by selling directly to dealers, shall
12 repurchase from the new vehicle dealer and remit payment to the
13 new vehicle dealer in accordance with their respective interest
14 in:

15 (1) Any new, undamaged and unsold vehicle inventory [of
16 the current model year or purchased from a manufacturer or
17 distributor within 120 days prior to receipt of notice of
18 termination or nonrenewal], whether acquired from the
19 manufacturer or distributor or from another dealer of the
20 same line-make, of the current and prior model year as ←
21 determined on a model by model basis within the line make
22 WITHIN 18 MONTHS OF THE TERMINATION DATE, provided the ←
23 vehicle has less than [500] ~~1,000~~ 750 miles registered on the ←
24 odometer, not including mileage incurred in delivery from the
25 manufacturer or in transporting the vehicle between dealers
26 for sale, at the dealer's net acquisition cost, plus any cost
27 to the dealer for returning the vehicle inventory to the
28 manufacturer or distributor. A dealer shall be entitled to
29 the payment under this paragraph for new and undamaged motor
30 vehicles having a gross vehicle weight rating of at least

1 10,001 pounds of current and two prior model years as
2 determined on a model-by-model basis within the line-make.

3 (2) All new, unused, undamaged parts listed in the
4 current price catalog acquired from a manufacturer or
5 distributor or a source approved or recommended by the
6 manufacturer or distributor at the dealer price listed in the
7 current parts catalog, less applicable allowances, plus 5% of
8 the catalog price of the part for the cost of packing and
9 returning the parts to the manufacturer or distributor.

10 Reconditioned or core parts shall be valued at their core
11 value, the price listed in the current parts catalog or the
12 amount paid for expedited return of core parts, whichever is
13 higher.

14 (3) Any special tools or equipment offered for sale
15 during the three years preceding termination or nonrenewal
16 and each trademark or trade name bearing signs which was
17 recommended or required by the manufacturer or distributor at
18 fair market value at the time the notice of termination or
19 nonrenewal is given.

20 In the event the inventory is subject to a security interest,
21 the manufacturer may make payment jointly to the dealer and the
22 holder of the security interest.

23 (b) Failure to pay sums due.--A manufacturer or distributor
24 who fails to pay those sums due the dealer within the prescribed
25 time or at such time as the dealer proffers good title prior to
26 the prescribed time for payment is liable to the new vehicle
27 dealer for:

28 (1) the greater of dealer net acquisition cost, fair
29 market value or current price of inventory;

30 (2) interest on the amount due, calculated at the rate

1 applicable to a judgment of court; and

2 (3) reasonable attorney fees and costs.

3 (c) Limited applicability.--This section shall not apply to
4 manufacturers, distributors or dealers of recreational vehicles
5 or manufactured housing, nor shall it apply to motorcycle
6 manufacturers, distributors or dealers except when the
7 unilateral termination or failure to renew is by the
8 manufacturer or distributor.

9 Section 5. This act shall take effect in 60 days.