

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 419 Session of 2011

INTRODUCED BY TOMLINSON, FONTANA, EARLL, SOLOBAY, MENSCH, ALLOWAY, WAUGH AND BOSCOLA, FEBRUARY 7, 2011

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 22, 2011

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 DEFINITION OF "AREA OF ←
5 RESPONSIBILITY"; FURTHER PROVIDING FOR REIMBURSEMENT FOR ALL
6 PARTS AND SERVICE REQUIRED BY THE MANUFACTURER OR DISTRIBUTOR
7 AND REIMBURSEMENT AUDITS; PROVIDING FOR AREA OF
8 RESPONSIBILITY; further providing for grounds for
9 disciplinary proceedings; and making a related repeal.

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

12 ~~Section 1. Section 19(10) of the act of December 22, 1983 ←~~
13 ~~(P.L.306, No.84), known as the Board of Vehicles Act, amended~~
14 ~~October 18, 2000 (P.L.577, No.75), is amended to read:~~

15 SECTION 1. SECTION 2 OF THE ACT OF DECEMBER 22, 1983 ←
16 (P.L.306, NO.84), KNOWN AS THE BOARD OF VEHICLES ACT, IS AMENDED
17 BY ADDING A DEFINITION TO READ:

18 SECTION 2. DEFINITIONS.

19 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
20 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE

1 CONTEXT CLEARLY INDICATES OTHERWISE:

2 * * *

3 "AREA OF RESPONSIBILITY." THE GEOGRAPHIC AREA DESIGNATED IN
4 THE FRANCHISE AGREEMENT OR RELATED DOCUMENT WHERE A NEW VEHICLE
5 DEALER IS RESPONSIBLE FOR EFFECTIVELY SELLING, SERVICING AND
6 OTHERWISE REPRESENTING THE PRODUCTS OF THE MANUFACTURER.

7 * * *

8 SECTION 2. SECTION 9(C) OF THE ACT, AMENDED OCTOBER 18, 2000
9 (P.L.577, NO.75), IS AMENDED AND SUBSECTION (E) IS AMENDED BY
10 ADDING A PARAGRAPH TO READ:

11 SECTION 9. REIMBURSEMENT FOR ALL PARTS AND SERVICE REQUIRED BY
12 THE MANUFACTURER OR DISTRIBUTOR; REIMBURSEMENT
13 AUDITS.

14 * * *

15 [(C) COPY OF OBLIGATION TO BE FILED WITH BOARD.--A COPY OF
16 THE DELIVERY AND PREPARATION OBLIGATIONS OF ITS DEALERS SHALL BE
17 FILED WITH THE BOARD BY EVERY VEHICLE MANUFACTURER AND SHALL
18 CONSTITUTE THE DEALER'S ONLY RESPONSIBILITY FOR PRODUCT
19 LIABILITY AS BETWEEN THE DEALER AND THE MANUFACTURER.]

20 * * *

21 (E) WARRANTY REIMBURSEMENT AND INCENTIVE OR REIMBURSEMENT
22 PROGRAM APPROVAL AND AUDITS.--

23 * * *

24 (3) (I) AFTER THE COMPLETION OF ANY INTERNAL APPEAL
25 PROCESS PURSUANT TO THE MANUFACTURER'S OR DISTRIBUTOR'S
26 POLICY MANUAL, BUT NO LESS THAN 30 DAYS PRIOR TO A
27 MANUFACTURER OR DISTRIBUTOR CHARGING BACK A NEW VEHICLE
28 DEALER FOR ANY CLAIMS WHICH THE MANUFACTURER OR
29 DISTRIBUTOR ALLEGES ARE FALSE OR UNSUBSTANTIATED, THE
30 MANUFACTURER OR DISTRIBUTOR SHALL NOTIFY THE NEW VEHICLE

1 DEALER IN WRITING OF ALL OF THE FOLLOWING:

2 (A) THE AMOUNT OF AND BASIS FOR EACH CLAIM THE
3 MANUFACTURER OR DISTRIBUTOR SEEKS TO CHARGE BACK.

4 (B) THE TOTAL AMOUNT TO BE CHARGED BACK.

5 (II) DURING THE 30-DAY TIME PERIOD UNDER
6 SUBPARAGRAPH (I), A NEW VEHICLE DEALER MAY FILE WITH THE
7 BOARD A PROTEST OF THE CHARGE-BACKS AS PROVIDED FOR
8 UNDER SECTION 8. WHEN SUCH A PROTEST IS FILED, THE BOARD
9 SHALL INFORM THE MANUFACTURER OR DISTRIBUTOR THAT A
10 TIMELY PROTEST HAS BEEN FILED AND THAT THE MANUFACTURER
11 OR DISTRIBUTOR SHALL NOT CHARGE BACK THE NEW VEHICLE
12 DEALER:

13 (A) UNTIL THE BOARD HAS HELD A HEARING; OR

14 (B) IF THE BOARD HAS DETERMINED THAT THERE IS
15 GOOD CAUSE FOR NOT PERMITTING THE CHARGE-BACK OF SUCH
16 NEW VEHICLE DEALER.

17 * * *

18 SECTION 3. THE ACT IS AMENDED BY ADDING A SECTION TO READ:
19 SECTION 12.1. AREA OF RESPONSIBILITY.

20 IT SHALL BE A VIOLATION OF THIS ACT FOR ANY MANUFACTURER OR
21 DISTRIBUTOR, OFFICER, AGENT OR ANY REPRESENTATIVE OF A
22 MANUFACTURER OR DISTRIBUTOR TO UNREASONABLY ALTER A NEW VEHICLE
23 DEALER'S AREA OF RESPONSIBILITY. THE FOLLOWING SHALL APPLY:

24 (1) ADVANCE NOTICE FROM THE MANUFACTURER OF AN
25 ALTERATION OF A DEALER'S AREA OF RESPONSIBILITY SHALL BE
26 GIVEN AT LEAST 60 DAYS BEFORE THE EFFECTIVE DATE OF THE
27 ALTERATION. THE NOTICE SHALL INCLUDE AN EXPLANATION OF THE
28 BASIS FOR THE ALTERATION.

29 (2) AT ANY TIME BEFORE THE EFFECTIVE DATE OF SUCH
30 ALTERATION OF A DEALER'S AREA OF RESPONSIBILITY, AND AFTER

1 THE COMPLETION OF ANY INTERNAL APPEAL PROCESS PURSUANT TO THE
2 MANUFACTURER'S OR DISTRIBUTOR'S POLICY MANUAL, THE DEALER MAY
3 FILE A PROTEST AS PROVIDED FOR UNDER SECTION 8. IN THE EVENT
4 A PROTEST IS FILED, NO SUCH ALTERATION OF A DEALER'S AREA OF
5 RESPONSIBILITY SHALL BECOME EFFECTIVE UNTIL FINAL
6 DETERMINATION BY THE BOARD.

7 (3) IF A DEALER PROTESTS UNDER PARAGRAPH (2), THE BURDEN
8 OF PROOF SHALL BE ON THE MANUFACTURER TO SHOW THAT THE
9 DEALER'S AREA OF RESPONSIBILITY IS REASONABLE AND JUSTIFIABLE
10 IN LIGHT OF THE MARKET CONDITIONS.

11 (4) IF A NEW VEHICLE DEALER'S AREA OF RESPONSIBILITY IS
12 ALTERED, THE MANUFACTURER SHALL ALLOW 18 MONTHS FOR THE
13 DEALER TO PENETRATE THE MARKET AND TO BECOME SALES EFFECTIVE
14 PRIOR TO TAKING NEGATIVE LEGAL ACTION CLAIMING A BREACH OR
15 NONPERFORMANCE OF THE DEALER'S SALES PERFORMANCE
16 RESPONSIBILITIES AGAINST THE DEALER.

17 SECTION 4. SECTION 19(10) OF THE ACT, AMENDED OCTOBER 18,
18 2000 (P.L.577, NO.75), IS AMENDED TO READ:

19 Section 19. Grounds for disciplinary proceedings.

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

29 * * *

30 (10) Having engaged in the buying, selling, exchanging,

1 trading or otherwise dealing in vehicles on Sunday in
2 violation of 18 Pa.C.S. § 7365 (relating to trading in motor
3 vehicles and trailers).

4 (i) Manufactured housing is permitted to be sold on
5 Sundays by licensed manufactured housing dealers without
6 being subject to prosecution under this paragraph.

7 ~~(ii) Motorcycles are permitted to be sold on Sundays~~ ←
8 ~~by licensed motorcycle dealers LICENSED MOTORCYCLE~~ ←
9 ~~DEALERS ARE PERMITTED TO BUY, SELL, EXCHANGE, TRADE OR~~
10 ~~OTHERWISE DEAL IN MOTORCYCLES ON SUNDAY without being~~
11 ~~subject to prosecution under this paragraph.~~

12 * * *

13 Section 2 5. Repeals are as follows: ←

14 (1) The General Assembly declares that the repeal under
15 paragraph (2) is necessary to effectuate the amendment of
16 section 19(10) of the act.

17 (2) 18 Pa.C.S. § 7365 is repealed insofar as it relates
18 to motorcycles.

19 Section 3 6. This act shall take effect in 60 days. ←