

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1898** Session of
2017

INTRODUCED BY SANTORA, MUSTIO, READSHAW, DAY, EMRICK, GILLESPIE, HELM, HICKERNELL, MAHER, MENTZER, M. QUINN, SONNEY, BRIGGS, D. COSTA, DEASY, J. HARRIS, KORTZ, McCLINTON, RAVENSTAHL, CHARLTON, PASHINSKI, DRISCOLL, GALLOWAY, MATZIE, SNYDER, CORBIN, NESBIT, SAINATO, SCHLOSSBERG, PETRARCA, GOODMAN, CARROLL, MARKOSEK, MILLARD, DUNBAR, PEIFER, KEEFER, HARKINS, LONGIETTI, DeLUCA, TAYLOR, MASSER, MARSHALL, STEPHENS, NEILSON, FARRY, SCHWEYER, TOPPER, BARRAR, WHITE, WATSON, MARSICO, REESE, FLYNN, BENNINGHOFF, KIM, HENNESSEY, PICKETT, JAMES, PYLE, DAVIS, STURLA AND HEFFLEY, NOVEMBER 8, 2017

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF REPRESENTATIVES, AS AMENDED, DECEMBER 12, 2017

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," further providing for definitions; providing for
5 vehicle recalls; and further providing for unlawful acts by
6 manufacturers or distributors, for application for license
7 and for licensing cost.

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

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

13 Section 2. Definitions.

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

1 * * *

2 "DO-NOT-DRIVE ORDER." A NOTIFICATION PROVIDED TO THE OWNER <--
3 OF AN AFFECTED VEHICLE BY A MANUFACTURER OR BY THE NATIONAL
4 HIGHWAY TRAFFIC SAFETY ADMINISTRATION UNCONDITIONALLY
5 INSTRUCTING THE OWNER TO STOP DRIVING THE VEHICLE UNTIL THE
6 NONCOMPLIANCE OR DEFECT REMEDY IS PERFORMED.

7 * * *

8 "Significantly modify facilities." An alteration that has a
9 major impact on the architectural features, characteristics,
10 appearance or integrity of a structure or lot. The term does not
11 include routine maintenance, such as interior painting,
12 reasonably necessary to maintain a dealership facility in
13 attractive condition.

14 * * *

15 "Stop-sale order." A notification issued by a manufacturer
16 to its new vehicle dealers stating that certain used vehicles in
17 inventory ~~should~~ SHALL not be sold or leased, at retail or <--
18 wholesale, due to a Federal safety recall for a defect or a
19 noncompliance or a Federal or California emissions recall.

20 * * *

21 Section 2. The act is amended by adding a section to read:
22 Section 9.1. Vehicle recalls.

23 (a) General rule.--A manufacturer shall compensate its new
24 vehicle dealers for all labor and parts required by the
25 manufacturer to perform recall repairs. Compensation for recall
26 repairs shall be in the same manner as warranty parts and labor
27 compensation under section 9. If parts or a remedy are not
28 reasonably available to perform a recall service or repair on a
29 used vehicle held for sale by a new vehicle dealer of the same
30 line-make within ~~15~~ 30 days of the manufacturer issuing the <--

1 initial notice of recall, and the manufacturer has issued a
2 stop-sale order or a do-not-drive ~~or similar notification~~ order <--
3 on the vehicle, the manufacturer shall compensate the dealer at
4 a PRORATED rate of at least ~~1.75%~~ 1.5% of the value of the <--
5 vehicle per month, ~~or portion of a month, while the recall or~~ <--
6 ~~remedy parts are unavailable and the stop sale order or the do-~~
7 ~~not drive or similar notification order remains in effect.,~~ <--
8 BEGINNING ON THE DATE THAT IS 30 DAYS AFTER THE DATE ON WHICH
9 THE STOP-SALE OR DO-NOT-DRIVE ORDER WAS PROVIDED TO THE DEALER,
10 UNTIL THE EARLIER OF THE DATE THE RECALL OR REMEDY PARTS ARE
11 MADE AVAILABLE OR THE DATE THE DEALER SELLS, TRADES OR OTHERWISE
12 DISPOSES OF THE AFFECTED USED VEHICLE. The following shall
13 apply:

14 (1) The value of a used vehicle shall be the average
15 trade-in value for used vehicles as indicated in an
16 independent third-party guide for the year, make, model and
17 mileage of the recalled vehicle ~~prior to~~ AT THE TIME OF the <--
18 announcement of the stop-sale order or the do-not-drive ~~or~~ <--
19 ~~similar notification~~ order.

20 (2) This section shall only apply to used vehicles
21 subject to safety or emissions recalls pursuant to and
22 recalled in accordance with Federal law and regulations and
23 where a stop-sale order or a do-not-drive ~~or similar~~ <--
24 ~~notification~~ order has been issued. Further, this section
25 shall only apply to new vehicle dealers holding used vehicles
26 for sale that are a line-make that the dealer is franchised
27 to sell or on which the dealer is authorized to perform
28 recall repairs.: <--

29 (I) IN INVENTORY AT THE TIME THE STOP-SALE OR DO-
30 NOT-DRIVE ORDER WAS ISSUED; OR

1 (II) WHICH WERE TAKEN INTO THE USED VEHICLE
2 INVENTORY OF THE DEALER AS A LEASE RETURN VEHICLE OR
3 CONSUMER TRADE-IN INCIDENT TO THE PURCHASE OF A NEW
4 VEHICLE FROM THE DEALER AFTER THE STOP-SALE OR DO-NOT-
5 DRIVE ORDER WAS ISSUED.

6 (3) NOTHING IN THIS SECTION SHALL REQUIRE A MANUFACTURER
7 TO PROVIDE TOTAL COMPENSATION TO A DEALER WHICH WOULD EXCEED
8 THE TOTAL AVERAGE TRADE-IN VALUE OF THE AFFECTED USED MOTOR
9 VEHICLE AS ORIGINALLY DETERMINED UNDER PARAGRAPH (1).

10 (b) Violation.--It is a violation of this section for a
11 manufacturer to reduce the amount of compensation otherwise owed
12 to a new vehicle dealer ~~who~~ BECAUSE THE NEW VEHICLE DEALER has <--
13 submitted a claim for reimbursement under this section or was
14 otherwise compensated for a vehicle subject to a recall where a
15 stop-sale order or a do-not-drive ~~or similar notification~~ order <--
16 has been issued. This subsection applies regardless of whether
17 the reduction in the amount of compensation owed to a new
18 vehicle dealer is through a chargeback, removal from an
19 incentive program, reduction in amount owed under an incentive
20 program or any other means.

21 (c) Procedure.--A reimbursement claim made by new vehicle
22 dealers under this section for recall remedies or repairs, or
23 for compensation where no part or repair is reasonably available
24 and the used vehicle is subject to a stop-sale order or a do-
25 not-drive ~~or similar notification~~ order, shall be subject to the <--
26 same limitations and requirements as a warranty reimbursement
27 claim made under section 9. A claim shall be either approved or
28 disapproved within 30 days after the claim is submitted to the
29 manufacturer in the manner and on the forms the manufacturer
30 reasonably prescribes. A claim shall be paid within 30 days of

1 approval of the claim by the manufacturer. A claim not
2 specifically disapproved in writing within 30 days after the
3 manufacturer receives a submitted claim shall be deemed to be
4 approved.

5 (d) Alternative compensation.--As an alternative to the
6 compensation provided for under subsection (a), a manufacturer <--
7 COMPENSATION PROVIDED FOR UNDER SUBSECTION (A): <--

8 (1) A MANUFACTURER may compensate its new vehicle
9 dealers under a national recall compensation program if the
10 compensation under the program is equal to or greater than
11 that provided under subsection (a) or the SUBSECTION (A); OR <--

12 (2) THE manufacturer and dealer otherwise agree TO <--
13 EQUAL OR GREATER COMPENSATION THAN THAT PROVIDED UNDER
14 SUBSECTION (A).

15 (E) EXCLUSIVE REMEDY.--ANY COMPENSATION PROVIDED TO A NEW
16 VEHICLE DEALER PURSUANT TO THIS SECTION IS EXCLUSIVE AND MAY NOT
17 BE COMBINED WITH ANY OTHER FEDERAL OR STATE RECALL COMPENSATION
18 REMEDY.

19 (e) (F) Disclosure.--A new or used vehicle dealer shall <--
20 disclose in writing to used vehicle RETAIL purchasers AT THE <--
21 TIME OF SALE the existence of any open, unremedied recalls. By
22 providing to the used vehicle RETAIL purchaser a report obtained <--
23 from the publicly accessible Internet website safercar.gov, or a
24 successor website, based on a vehicle identification number
25 search, the dealer shall be deemed to have complied with the
26 disclosure requirement under this subsection. For the purpose of
27 this subsection, failure to provide disclosures to multiple
28 vehicle RETAIL purchasers AT THE TIME OF SALE in violation of <--
29 this subsection constitutes a single offense with a maximum fine
30 of \$1,000 under section 28(a).

1 Section 3. Section 12(a)(8) of the act is amended to read:

2 Section 12. Unlawful acts by manufacturers or distributors.

3 (a) Unlawful coercive acts.--It shall be a violation for any
4 manufacturer, factory branch, distributor, field representative,
5 officer, agent or any representative whatsoever of such
6 manufacturer, factory branch or distributor licensed under this
7 act to require, attempt to require, coerce or attempt to coerce
8 any new vehicle dealer in this Commonwealth to:

9 * * *

10 (8) Expand, construct or significantly modify facilities
11 before a date that is ten years after the date of the
12 construction of the facility or the alteration or remodeling
13 at that location was completed and without assurances that
14 the manufacturer or distributor will provide a reasonable
15 supply of new vehicles within a reasonable time so as to
16 justify such an expansion in light of the market and economic
17 conditions. This paragraph shall not apply if the expansion,
18 construction or significant modification is necessary to
19 comply with a health or safety law or to comply with a
20 technology requirement, which is necessary to sell or service
21 a vehicle that the new vehicle dealer is licensed by the
22 manufacturer to sell or service. This section shall apply to
23 any successor dealer provided the dealer has been designated
24 and approved by the manufacturer in the franchise agreement
25 and the construction, alteration or remodeling substantially
26 complied with the manufacturer's brand image standards or
27 plans that the manufacturer provided at the time the
28 construction, alteration or remodeling was completed. Nothing
29 in this paragraph shall prohibit a manufacturer from:

30 (i) Continuing a facility improvement program that

1 is in effect as of the effective date of this
2 subparagraph with more than one new vehicle dealer in
3 this Commonwealth or to renewing or modifying the
4 facility improvement program.

5 (ii) Providing lump sum or regularly scheduled
6 payments to assist a new vehicle dealer in making a
7 facility improvement, including construction, alteration
8 or remodeling or installing signage or an image element.

9 (iii) Providing reimbursement to a new vehicle
10 dealer on reasonable, written terms for a portion of the
11 new vehicle dealer's cost of making a facility
12 improvement, including construction, alteration or
13 remodeling, the purchase of goods, building materials or
14 services or installing signage or an image element.

15 * * *

16 Section 4. Section 22 of the act is amended by adding a
17 subsection to read:

18 Section 22. Application for license.

19 * * *

20 ~~(b.1) Temporary license. Upon receipt of a complete and~~ <--
21 ~~accurate new vehicle dealer application or new vehicle dealer~~
22 ~~change of address application with manufacturer letter of~~
23 ~~intent, and prior to proof of compliance with 49 Pa. Code §~~
24 ~~19.18 (relating to established place of business for dealers),~~
25 ~~the board shall issue a new vehicle dealer license and approval~~
26 ~~letter immediately. In the interim, at such time as the board~~
27 ~~processes and reviews the application, the new vehicle dealer~~
28 ~~shall maintain a copy of the application sent to the board as~~
29 ~~its temporary license pending receipt of its approval letter and~~
30 ~~new vehicle dealer license. The temporary license shall expire~~

~~1 at the end of 60 days from the date on the application. If a new
2 vehicle dealer has submitted an application and proof of
3 compliance with 49 Pa. Code § 19.18 during the 60 day time
4 period and has not received an approval or denial from the
5 department, the temporary license shall be extended until the
6 approval or denial is received by the new vehicle dealer.~~

7 (B.1) TEMPORARY LICENSE.--UPON RECEIPT OF A COMPLETE AND <--
8 ACCURATE NEW VEHICLE DEALER APPLICATION OR NEW VEHICLE DEALER
9 CHANGE OF ADDRESS APPLICATION, THE BOARD SHALL ISSUE A NEW
10 VEHICLE DEALER LICENSE IMMEDIATELY. IF THE NEW VEHICLE DEALER
11 DOES NOT HAVE THE FRANCHISE APPROVAL LETTER, THE TELEPHONE
12 BUSINESS LINE INFORMATION, THE CERTIFICATE OF OCCUPANCY OR THE
13 LEASE OR DEED FOR THE PROPERTY AVAILABLE WHEN THE APPLICATION
14 HAS BEEN SUBMITTED, THE NEW VEHICLE DEALER SHALL RECEIVE A
15 TEMPORARY LICENSE THAT EXPIRES AT THE END OF 45 BUSINESS DAYS
16 FROM THE DATE OF CLOSING. THE NEW VEHICLE DEALER SHALL SUBMIT
17 THE FRANCHISE APPROVAL LETTER, THE TELEPHONE BUSINESS LINE
18 INFORMATION, THE CERTIFICATE OF OCCUPANCY AND THE LEASE OR DEED
19 FOR THE PROPERTY PRIOR TO THE EXPIRATION OF THE TEMPORARY
20 LICENSE. UPON RECEIPT OF THE FRANCHISE APPROVAL LETTER, THE
21 TELEPHONE BUSINESS LINE INFORMATION, THE CERTIFICATE OF
22 OCCUPANCY AND THE LEASE OR DEED FOR THE PROPERTY, THE BOARD
23 SHALL ISSUE A LICENSE IMMEDIATELY.

24 * * *

25 Section 5. Section 27.1(a)(2) of the act is amended to read:
26 Section 27.1. Licensing cost.

27 (a) Licensing cost.--Subject to the limitations established
28 under subsection (c), a licensed dealer who has a contract with
29 the Department of Transportation pursuant to 75 Pa.C.S. § 7501
30 (relating to authorization of messenger and agent services) may

1 charge the purchaser of a vehicle a licensing cost permissible
2 under 75 Pa.C.S. Ch. 19 (relating to fees) and the act of
3 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
4 Practices and Consumer Protection Law, and regulations
5 promulgated thereunder, to include any of the following:

6 * * *

7 (2) A documentary preparation charge for:

8 (i) Preparation and completion of documents required
9 to register and license the vehicle under 75 Pa.C.S.
10 (relating to vehicles).

11 (ii) Collection and submission of taxes payable by
12 the purchaser.

13 (iii) Preparation of any other information
14 associated with titling and registration of a vehicle.

15 (iv) Complying with Federal and State laws and
16 regulations, including RELATING TO THE privacy and <--
17 safeguarding of customer information requirements, <--
18 PROVIDING FINANCIAL SERVICES TO THE CUSTOMER AND
19 PREPARATION AND RETRIEVAL OF DOCUMENTS.

20 * * *

21 Section 6. This act shall take effect in 60 days.