

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, HEFFLEY AND GABLER, NOVEMBER 8, 2017

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, IN SENATE, AS AMENDED, JUNE 12, 2018

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

1 context clearly indicates otherwise:

2 * * *

3 "Do-not-drive order." A notification provided to the owner
4 of an affected vehicle by a manufacturer or by the National
5 Highway Traffic Safety Administration unconditionally
6 instructing the owner to stop driving the vehicle until the
7 noncompliance or defect remedy is performed.

8 * * *

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

15 * * *

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

21 * * *

22 Section 2. The act is amended by adding a section to read:

23 Section 9.1. Vehicle recalls.

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

1 line-make within 30 days of the manufacturer issuing the initial
2 notice of recall, and the manufacturer has issued a stop-sale
3 order or a do-not-drive order on the vehicle, the manufacturer
4 shall compensate the dealer at a prorated rate of at least 1.5%
5 of the value of the vehicle per month, beginning on the date
6 that is 30 days after the date on which the stop-sale or do-not-
7 drive order was provided to the dealer, until the earlier of the
8 date the recall or remedy parts are made available or the date
9 the dealer sells, trades or otherwise disposes of the affected
10 used vehicle. The following shall apply:

11 (1) The value of a used vehicle shall be the average
12 trade-in value for used vehicles as indicated in an
13 independent third-party guide for the year, make, model and
14 mileage of the recalled vehicle at the time of the
15 announcement of the stop-sale order or the do-not-drive
16 order.

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

25 (i) in inventory at the time the stop-sale or do-
26 not-drive order was issued; or

27 (ii) which were taken into the used vehicle
28 inventory of the dealer as a lease return vehicle or
29 consumer trade-in incident to the purchase of a new
30 vehicle from the dealer after the stop-sale or do-not-

1 drive order was issued.

2 (3) Nothing in this section shall require a manufacturer
3 to provide total compensation to a dealer which would exceed
4 the total average trade-in value of the affected used motor
5 vehicle as originally determined under paragraph (1).

6 (b) Violation.--It is a violation of this section for a
7 manufacturer to reduce the amount of compensation otherwise owed
8 to a new vehicle dealer because the new vehicle dealer has
9 submitted a claim for reimbursement under this section or was
10 otherwise compensated for a vehicle subject to a recall where a
11 stop-sale order or a do-not-drive order has been issued. This
12 subsection applies regardless of whether the reduction in the
13 amount of compensation owed to a new vehicle dealer is through a
14 chargeback, removal from an incentive program, reduction in
15 amount owed under an incentive program or any other means.

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

29 (d) Alternative compensation.--As an alternative to the
30 compensation provided for under subsection (a):

1 (1) a manufacturer may compensate its new vehicle
2 dealers under a national recall compensation program if the
3 compensation under the program is equal to or greater than
4 that provided under subsection (a); or

5 (2) the manufacturer and dealer otherwise agree to equal
6 or greater compensation than that provided under subsection
7 (a).

8 (e) Exclusive remedy.--Any compensation provided to a new
9 vehicle dealer pursuant to this section is exclusive and may not
10 be combined with any other Federal or State recall compensation
11 remedy.

12 (f) Disclosure.--A new or used vehicle dealer shall disclose
13 in writing to used vehicle retail purchasers at the time of sale
14 the existence of any open, unremedied recalls. By providing to
15 the used vehicle retail purchaser a report obtained from the
16 publicly accessible Internet website safercar.gov, or a
17 successor website, based on a vehicle identification number
18 search, the dealer shall be deemed to have complied with the
19 disclosure requirement under this subsection. For the purpose of
20 this subsection, failure to provide disclosures to multiple
21 vehicle retail purchasers at the time of sale in violation of
22 this subsection constitutes a single offense with a maximum fine
23 of \$1,000 under section 28(a).

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

25 Section 12. Unlawful acts by manufacturers or distributors.

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

1 any new vehicle dealer in this Commonwealth to:

2 * * *

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

23 (i) Continuing a facility improvement program that
24 is in effect as of the effective date of this
25 subparagraph with more than one new vehicle dealer in
26 this Commonwealth or to renewing or modifying the
27 facility improvement program.

28 (ii) Providing lump sum or regularly scheduled
29 payments to assist a new vehicle dealer in making a
30 facility improvement, including construction, alteration

1 or remodeling or installing signage or an image element.

2 (iii) Providing reimbursement to a new vehicle
3 dealer on reasonable, written terms for a portion of the
4 new vehicle dealer's cost of making a facility
5 improvement, including construction, alteration or
6 remodeling, the purchase of goods, building materials or
7 services or installing signage or an image element.

8 * * *

9 Section 4. Section ~~22 of the act~~ 22(A)(9) OF THE ACT IS <--
10 AMENDED AND THE SECTION is amended by adding a subsection to
11 read:

12 Section 22. Application for license.

13 (A) DEALER'S OR VEHICLE AUCTION'S LICENSE.--APPLICATION FOR <--
14 LICENSE AS A DEALER OR VEHICLE AUCTION SHALL BE MADE IN WRITING
15 TO THE BOARD, SIGNED BY THE APPLICANT, SETTING FORTH THE
16 FOLLOWING:

17 * * *

18 (9) A STATEMENT BY THE APPLICANT THAT HE HAS MET ALL
19 FACILITY REQUIREMENTS AS NOTED HEREIN AND AS REQUIRED BY
20 REGULATION, EXCEPT AS PROVIDED IN SUBSECTION (A.1).

21 * * * <--

22 (b.1) Temporary license (A.1) TEMPORARY PERMIT FOR NEW <--
23 VEHICLE DEALERS.--Upon receipt of a complete and accurate new
24 vehicle dealer application or new vehicle dealer change of
25 address application, the board shall issue a new vehicle dealer
26 license immediately. If the new vehicle dealer does not have the
27 franchise approval letter, the telephone business line
28 information, the certificate of occupancy or the lease or deed
29 for the property available when the application has been
30 submitted, the new vehicle dealer shall receive a temporary

1 license PERMIT that expires at the end of 45 business days from <--
2 the date of closing. The new vehicle dealer shall submit the
3 franchise approval letter, the telephone business line
4 information, the certificate of occupancy and the lease or deed
5 for the property prior to the expiration of the temporary
6 license PERMIT. Upon receipt of the franchise approval letter, <--
7 the telephone business line information, the certificate of
8 occupancy and the lease or deed for the property, the board
9 shall issue a NEW VEHICLE DEALER license immediately. <--

10 * * *

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

13 (a) Licensing cost.--Subject to the limitations established
14 under subsection (c), a licensed dealer who has a contract with
15 the Department of Transportation pursuant to 75 Pa.C.S. § 7501
16 (relating to authorization of messenger and agent services) may
17 charge the purchaser of a vehicle a licensing cost permissible
18 under 75 Pa.C.S. Ch. 19 (relating to fees) and the act of
19 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
20 Practices and Consumer Protection Law, and regulations
21 promulgated thereunder, to include any of the following:

22 * * *

23 (2) A documentary preparation charge for:

24 (i) Preparation and completion of documents required
25 to register and license the vehicle under 75 Pa.C.S.
26 (relating to vehicles).

27 (ii) Collection and submission of taxes payable by
28 the purchaser.

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

1 (iv) Complying with Federal and State laws and
2 regulations relating to the privacy and safeguarding of
3 customer information requirements, providing financial
4 services to the customer and preparation and retrieval of
5 documents.

6 * * *

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