
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 764 Session of
2017

INTRODUCED BY GORDNER, RAFFERTY, TARTAGLIONE AND ARGALL,
JUNE 14, 2017

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
JUNE 14, 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," providing for preliminary provisions, further
5 providing for short title, for definitions, for State Board
6 of Vehicle Manufacturers, Dealers and Salespersons, for
7 powers and duties of board, for license to engage in
8 business, for biennial renewal, for enforcement, for protest
9 hearing decision within 120 days unless waived by the
10 parties, for reimbursement for all parts and service required
11 by the manufacturer or distributor and reimbursement audits,
12 for damage disclosure, for mediation and arbitration, for
13 unlawful acts by manufacturers or distributors, for area of
14 responsibility, for termination of franchises, for industry
15 reorganization, for succession to franchise ownership, for
16 manufacturer right of first refusal, for manufacturer or
17 distributor repurchase of inventory and equipment, for
18 reimbursement of rental costs for dealer facility, for
19 grounds for disciplinary proceedings, for administrative
20 liability of employer, copartnership, association or
21 corporation, for reinstatement, for application for license,
22 for refusal of license, for change of salesperson's license
23 to indicate new employer, for termination of employment or
24 business, for exemption from licensure and registration, for
25 limitations on establishing or relocating dealers, for
26 licensing cost, for penalties, for civil actions for
27 violations, for fees, for disposition of fees and fines, for
28 vehicle shows, off-premise sales and exhibitions and for off-
29 premise sales, shows, exhibitions or rallies on Sundays;
30 providing for recreational vehicles and for miscellaneous
31 provisions; further providing for savings provision, for
32 repeals, expiration of terms of board members and for
33 existing rules and regulations.

1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

3 Section 1. The act of December 22, 1983 (P.L.306, No.84),
4 known as the Board of Vehicles Act, is amended by adding a
5 chapter heading to read:

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 2. Section 1 of the act is renumbered to read:
9 Section [1] 101. Short title.

10 This act shall be known and may be cited as the Board of
11 Vehicles Act.

12 Section 3. The definitions of "motor home," "recreational
13 vehicle" and "recreational vehicle park trailer" in section 2 of
14 the act are amended and the section is renumbered and amended by
15 adding a definition to read:

16 Section [2] 102. Definitions.

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

20 * * *

21 "Motor home." [A vehicle designed to provide temporary
22 living quarters, built into an integral part of, or permanently
23 attached to, a self-propelled vehicle chassis or van.] A
24 motorized vehicle designed to provide temporary living quarters
25 for recreational, camping or travel use. The unit must contain
26 at least four of the following permanently installed independent
27 life support systems:

28 (1) A cooking facility with an on-board fire source.

29 (2) A potable water supply system that includes at least
30 a sink, a faucet and a water tank with an exterior service

1 supply connection.

2 (3) A toilet with exterior evacuation.

3 (4) A gas or electric refrigerator.

4 (5) A heating or air conditioning system with an on-
5 board power or fuel source separate from the vehicle engine.

6 (6) An electric power system separate from the vehicle.

7 "Park model RV." A vehicle that:

8 (1) Is designed and marketed as temporary living
9 quarters for recreational camping, travel or seasonal use.

10 (2) Is not permanently affixed to real property for use
11 as a permanent dwelling.

12 (3) Is built on a single chassis mounted on wheels with
13 a gross trailer area not exceeding 400 square feet in the
14 set-up mode.

15 (4) Is certified by the manufacturer as complying with
16 the ANSI A119.5 Park Model Recreational Vehicle Standard.

17 * * *

18 "Recreational vehicle." [A vehicle primarily designed as
19 temporary living quarters for recreational, camping or travel
20 use, which either has its own power or is mounted on or drawn by
21 another vehicle. The term includes a travel trailer,
22 recreational vehicle park trailer, slide-in camper, camping
23 trailer and motor home.] A vehicle which is either self-
24 propelled or towed by a consumer-owned tow vehicle and designed
25 to provide temporary living quarters for recreational, camping
26 or travel use that complies with all applicable Federal vehicle
27 regulations and does not require a special-movement permit to
28 legally use on highways. The products are certified by the
29 manufacturer as complying with NFPA 1192 Standard on
30 Recreational Vehicles or ANSI A119.5 Park Model Recreational

1 Vehicle Standard and include the following types:

2 (1) Motor home.

3 (2) Travel trailer.

4 (3) Fifth wheel travel trailer.

5 (4) Folding camping trailer.

6 (5) Truck camper.

7 (6) Park model RV.

8 ["Recreational vehicle park trailer." A recreational vehicle
9 that is built on a single chassis mounted on wheels, has a gross
10 trailer area not exceeding 400 square feet in the set-up mode
11 and is certified by the manufacturer as complying with ANSI
12 A119.5.]

13 * * *

14 Section 4. The act is amended by adding a chapter heading to
15 read:

16 CHAPTER 3

17 VEHICLES

18 Section 5. Sections 3 and 4 of the act are amended to read:
19 Section [3] 301. State Board of Vehicle Manufacturers, Dealers
20 and Salespersons.

21 (a) Board.--The State Board of Vehicle Manufacturers,
22 Dealers and Salespersons shall consist of 17 members, one of
23 whom shall be the Commissioner of Professional and Occupational
24 Affairs, or his designee, one of whom shall be the Secretary of
25 the Department of Transportation, or his designee, one of whom
26 shall be the Director of Consumer Protection in the Office of
27 Attorney General, or his designee, and the remaining 14 of whom
28 shall be appointed by the Governor as follows:

29 (1) Three members shall be new vehicle dealers who have
30 been actively engaged as such for a period of five years

1 immediately preceding their appointment.

2 (2) Three members shall be used vehicle dealers who have
3 been actively engaged as such for a period of five years
4 immediately preceding their appointment. One used vehicle
5 dealer member beginning with the first vacancy for a used
6 vehicle dealer after the effective date of this amendment
7 shall also be an owner, partner or officer of a corporation
8 or business which is licensed as a vehicle auction and which
9 has been actively engaged as such for a period of five years
10 immediately preceding the appointment.

11 (3) One shall be a manufactured housing or mobile home
12 dealer who has been actively engaged as such for a period of
13 five years immediately preceding appointment.

14 (4) One shall be a salesperson who has been actively
15 engaged in the sale of new or used vehicles for a period of
16 five years immediately preceding appointment. The member
17 shall not be a dealer or an officer of a corporation or a
18 member of a partnership engaged in the business of a dealer
19 at the time of appointment.

20 (5) One shall be a recreational vehicle dealer who has
21 been actively engaged as such for a period of five years
22 immediately preceding appointment.

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

26 (6.1) One member shall be a mobility vehicle dealer who
27 has been actively engaged as such for a period of five years
28 immediately preceding appointment.

29 (7) Three shall be members of the general public having
30 no connection with the vehicle business.

1 (b) Terms of members.--The terms of the members of the board
2 shall be four years for members appointed after the effective
3 date of this amendment from the respective date of their
4 appointment, provided that a member may continue for a period
5 not to exceed six months beyond the expiration of his term if a
6 successor has yet to be duly appointed and qualified according
7 to law. The maximum number of consecutive terms a member shall
8 serve shall be two consecutive four-year terms. In the event
9 that any member shall die, resign or be removed from office, his
10 successor shall be appointed and hold office for the unexpired
11 term.

12 (c) Quorum.--A majority of the members of the board who have
13 been appointed and confirmed shall constitute a quorum. Motions,
14 questions and decisions of the board shall require the
15 affirmative vote of a majority of a quorum for adoption. The
16 board shall select, from among their number, a chairman and a
17 secretary.

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

26 (e) Attendance.--A member who fails to attend three
27 consecutive meetings shall forfeit his seat unless the
28 Commissioner of Professional and Occupational Affairs, upon
29 written request from the member, finds that the member should be
30 excused from a meeting because of illness or the death of an

1 immediate family member.

2 Section [4] 302. Powers and duties of board.

3 (a) Powers and duties.--The board shall have the power and
4 its duty shall be to:

5 (1) Provide for and regulate the licensing of
6 salespersons, dealers, vehicle auctions, manufacturers,
7 factory branches, distributors, distributor branches and
8 factory or distributor representatives as defined in [this
9 act] section 102.

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

16 (3) Investigate on its own initiative, upon complaint of
17 the Department of Transportation, Department of Community and
18 Economic Development, Department of Revenue or the Office of
19 the Attorney General, any law enforcement officer or upon the
20 verified complaint in writing of any person, any allegations
21 of the wrongful act or acts of any licensee or person
22 required to be licensed [hereunder] under this chapter. Duly
23 authorized agents of the Bureau of Professional and
24 Occupational Affairs shall be authorized to issue
25 administrative citations for violations of this [act] chapter
26 in accordance with section 5 of the act of July 2, 1993
27 (P.L.345, No.48), entitled "An act empowering the General
28 Counsel or his designee to issue subpoenas for certain
29 licensing board activities; providing for hearing examiners
30 in the Bureau of Professional and Occupational Affairs;

1 providing additional powers to the Commissioner of
2 Professional and Occupational Affairs; and further providing
3 for civil penalties and license suspension."

4 (4) Administer and enforce this [act] chapter and to
5 impose appropriate administrative discipline upon licensees
6 found to be in violation of this [act] chapter.

7 (5) Bring criminal prosecutions for unauthorized,
8 unlicensed or unlawful practice and bring an action to enjoin
9 such practices. Duly authorized agents of the bureau shall be
10 authorized to issue citations in accordance with section 5(a)
11 of the act of July 2, 1993 (P.L.345, No.48), entitled "An act
12 empowering the General Counsel or his designee to issue
13 subpoenas for certain licensing board activities; providing
14 for hearing examiners in the Bureau of Professional and
15 Occupational Affairs; providing additional powers to the
16 Commissioner of Professional and Occupational Affairs; and
17 further providing for civil penalties and license
18 suspension," for violations of this [act] chapter.

19 (6) Require each licensee to register biennially with
20 the board.

21 (7) Keep a record showing the names and addresses of all
22 licensees licensed under this [act] chapter.

23 (8) Keep minutes and records of all its transactions and
24 proceedings especially with relation to the issuance, denial,
25 registration, formal reprimand, suspension and revocation of
26 licenses. In all actions or proceedings in any court, a
27 transcript of any board record or any part thereof, which is
28 certified to be a true copy by the board, shall be entitled
29 to admission in evidence.

30 (9) Adopt, promulgate and enforce such rules and

1 regulations consistent with this [act] chapter as are deemed
2 necessary and proper to effectuate the provisions of this
3 [act] chapter.

4 (10) Submit annually, to the Consumer Protection and
5 Professional Licensure Committee of the Senate and the
6 Professional Licensure Committee of the House of
7 Representatives, a description of the types of complaints
8 received, status of the cases, board action which has been
9 taken and length of time from the initial complaint to final
10 board resolution.

11 (11) Submit annually to the department an estimate of
12 the financial requirements of the board for its
13 administrative, investigative, legal and miscellaneous
14 expenses.

15 (12) Submit annually to the House and Senate
16 Appropriations Committees, 15 days after the Governor has
17 submitted his budget to the General Assembly, a copy of the
18 budget request for the upcoming fiscal year which the board
19 previously submitted to the department.

20 (b) Summary proceedings.--All law enforcement officers in
21 this Commonwealth may institute summary criminal proceedings in
22 accordance with the Pennsylvania Rules of Criminal Procedure for
23 violations of this act. Any person who violates this [act]
24 chapter shall be subject to criminal prosecution as provided in
25 section [28] 328.

26 Section 6. Section 5 of the act, amended December 17, 2015
27 (P.L.450, No.78), is renumbered and amended to read:
28 Section [5] 303. License to engage in business.

29 (a) License required.--

30 (1) To promote the public safety and welfare, it shall

1 be unlawful for any person to engage in the business as a
2 salesperson, dealer, branch lot, wholesale vehicle auction,
3 public or retail vehicle auction, manufacturer, factory
4 branch, distributor, distributor branch, factory
5 representative or distributor representative within this
6 Commonwealth unless the person has secured a license as
7 required under this [act] chapter.

8 (2) A person, including, but not limited to,
9 salespersons, shall not engage in the business for his own
10 benefit or profit unless he is licensed in accordance with
11 this [act] chapter.

12 (3) A person shall not act as, offer to act as or hold
13 himself out to be a broker in the advertising, buying or
14 selling of any new or used vehicle.

15 (b) Mobile home parks.--

16 (1) It shall be unlawful for any person, for a
17 commission, compensation or other consideration, to sell or
18 act as salesperson, broker or sales agent in connection with
19 the sale of one or more mobile homes located in a mobile home
20 park, as provided for in section 11 of the act of November
21 24, 1976 (P.L.1176, No.261), known as the Mobile Home Park
22 Rights Act, unless such person shall be licensed under this
23 [act] chapter, except as provided for in paragraph (2).

24 (2) Any real estate salesperson or broker licensed under
25 the act of February 19, 1980 (P.L.15, No.9), known as the
26 Real Estate Licensing and Registration Act, may list for sale
27 any preowned mobile home as defined by the Mobile Home Park
28 Rights Act, whether or not the mobile home is located in a
29 mobile home park, without being licensed under the provisions
30 of this [act] chapter. No mobile home park rule shall prevent

1 the placement of a "for sale" sign on the home and on the
2 property on which the home is located. Nothing in this
3 paragraph shall authorize the listing for sale of preowned
4 mobile homes at a sales lot by a licensed real estate
5 salesperson or broker unless the salesperson or broker is
6 also licensed under this [act] chapter and has obtained a
7 sales tax license from the Department of Revenue.

8 (c) Salespersons to be employed.--It shall be unlawful for
9 any salesperson who has not been issued a salesperson's license
10 number by the board to engage in any activity related to the
11 buying, selling or exchanging of a vehicle for a commission,
12 compensation or other consideration. Any sale must be conducted
13 pursuant to and as part of the normal business activities of the
14 dealer by a person who is a licensed salesperson of the dealer,
15 unless that person is the dealer. The salesperson shall be
16 presently employed by the currently licensed vehicle dealer for
17 whom the salesperson is buying, selling or exchanging.

18 (1) Any salesperson licensed [hereunder] under this
19 chapter shall be licensed to sell only for one dealer at a
20 time and his license shall indicate the name of that dealer.

21 (2) A licensed salesperson who is employed by a dealer
22 who holds a dealer license in more than one category or at
23 more than one facility may sell for each such dealer or at
24 each such facility, provided there is common ownership.

25 (d) Display of license.--Each person to whom a license is
26 issued shall keep the license conspicuously displayed in his
27 principal office or place of business and shall, when required,
28 exhibit such license to any member or authorized representative
29 of the board.

30 (e) Facility requirements for dealers.--

1 (1) Dealers engaged in the business of buying, selling
2 or exchanging new and used vehicles, trailers or semitrailers
3 shall maintain an established place of business with a
4 salesroom devoted principally to the vehicle business, and
5 new vehicle dealers shall hold a franchise in writing with a
6 manufacturer or distributor authorizing a new vehicle dealer
7 to sell a particular line-make of vehicles from the address
8 of the licensed facility.

9 (i) A vehicle auction shall not be required to meet
10 the facility requirements [contained in] under this
11 subsection.

12 (ii) A branch lot shall be a separately licensed
13 location which meets the facility requirements [defined
14 herein] under this section and by the regulations as a
15 main lot, unless used solely for the storage of vehicles.

16 (2) Dealers engaged in the business of buying, selling
17 or exchanging used vehicles, trailers or semitrailers shall
18 maintain an established place of business with a salesroom
19 devoted principally to the vehicle business which is a
20 building or portion of a building where books and records are
21 kept.

22 (3) Dealers engaged in the business of buying, selling
23 or exchanging new manufactured housing and used mobile homes
24 or manufactured housing shall maintain a minimum usable
25 display area of 5,000 square feet devoted principally to the
26 mobile home or manufactured housing business, maintain an
27 established place of business and hold a contract in writing
28 with a buyer, seller or manufacturer giving such person
29 buying or selling rights for new manufactured housing of that
30 particular line from the address of the licensed facility.

1 (i) Dealers engaged in the business of buying,
2 selling or exchanging new manufactured housing, in lieu
3 of maintaining the minimum usable display area
4 requirements of this section, shall be authorized to
5 display, sell, list or offer for sale new manufactured
6 housing if the new manufactured housing is located on-
7 site in a mobile home park or new manufactured housing is
8 on real property owned or rented by a person who through
9 a written agreement with the dealer authorizes the dealer
10 to locate the new manufactured housing on the real
11 property and the dealer is authorized to display, sell,
12 list or offer the new manufactured housing at the real
13 property location. Such dealers must maintain an
14 established place of business and hold a contract in
15 writing with a buyer, seller or manufacturer giving such
16 person buying or selling rights for such new manufactured
17 housing.

18 (ii) A display, sale, listing or offer for sale from
19 a site or location as permitted by subparagraph (i) shall
20 not require the issuance of a branch lot license.

21 (4) Dealers engaged in the business of buying, selling
22 or exchanging used mobile homes or manufactured housing shall
23 maintain a place of business and a building, or a portion of
24 a building, where books and records are kept and which is
25 devoted principally to the mobile home or manufactured
26 housing business. There shall be no minimum square footage
27 display area requirement for a used mobile home or
28 manufactured housing dealer.

29 (i) Dealers engaged in the business of buying,
30 selling or exchanging new manufactured housing or used

1 mobile homes or manufactured housing in addition to
2 maintaining the business facility requirements of this
3 section shall be authorized to display, sell, list or
4 offer for sale used manufactured housing or mobile homes
5 if the used manufactured housing or mobile homes are
6 located on-site in a mobile home park or used
7 manufactured housing or mobile homes are located on real
8 property owned or rented by the person who owns the used
9 manufactured housing or mobile home and the dealer
10 possesses a written agreement with the person authorizing
11 the dealer to sell, list or offer the used manufactured
12 housing or mobile home on behalf of the person from the
13 real property location.

14 (ii) A display, sale, listing or offer for sale from
15 a site or location as permitted by subparagraph (i) shall
16 not require the issuance of a branch lot license.

17 (5) Dealers engaged in the business of buying, selling
18 or exchanging new or used recreational vehicles shall
19 maintain an established place of business with a minimum
20 usable display area of 5,000 square feet devoted principally
21 to the recreational vehicle business and hold a franchise in
22 writing with a buyer, seller or manufacturer giving such
23 person buying or selling rights for new recreational vehicles
24 of that particular line from the address of the licensed
25 facility.

26 (f) Wholesale vehicle auction activities.--

27 (1) Wholesale vehicle auctions in wholesale vehicle
28 auction sales transactions shall permit only the following
29 persons to sell vehicles at the auction: vehicle dealers
30 licensed under this [act] chapter or by any other state or

1 jurisdiction, manufacturers, leasing companies, rental
2 companies, financial institutions, insurance companies,
3 charitable nonprofit organizations; persons who sell vehicles
4 owned by their business which are utilized to accomplish
5 their main business purpose and who do not engage in any
6 vehicle buying, sales or repair business; and fleet owners.

7 (2) Only vehicle dealers licensed under this [act]
8 chapter or by any other state or jurisdiction shall be
9 permitted to purchase vehicles at wholesale vehicle auctions.
10 In addition to dealers licensed under this [act] chapter or
11 by any other state or jurisdiction, a vehicle business,
12 except for repair and towing, transporter, service, financier
13 or collector/repossessor businesses, registered with the
14 Department of Transportation and issued a Department of
15 Transportation identification number or licensed or
16 registered by any other state or jurisdiction for a similar
17 activity without being licensed under this [act] chapter
18 shall be authorized at wholesale vehicle auctions only to
19 buy, sell or exchange vehicles of the type for which the
20 business is authorized to engage by the Department of
21 Transportation or any other state or jurisdiction, provided
22 that upon buying such vehicle, application for an appropriate
23 certificate of title or certificate of salvage is made for
24 the vehicle.

25 (3) A dealer licensed under this [act] chapter without
26 possessing a wholesale vehicle auction or public or retail
27 vehicle auction license shall be permitted to sell vehicles
28 on consignment.

29 (4) A vehicle auction shall only permit a person who is
30 currently employed and licensed as a salesperson for a dealer

1 who holds a license issued under this [act] chapter or by any
2 other state or jurisdiction to buy, sell or exchange vehicles
3 at an auction on behalf of a dealer. This paragraph shall not
4 apply to a salesperson who is buying, selling or exchanging
5 vehicles at:

6 (i) wholesale vehicle auctions which are either
7 fleet sales or manufacturer's sales; or

8 (ii) sales of vehicles for salvage, where the
9 salesperson shall be permitted to buy, sell or exchange
10 vehicles for no more than five dealers during the sale.

11 (5) Any person who has had his license under this [act]
12 chapter or authority to engage as a dealer or salesperson in
13 any other state or jurisdiction suspended or revoked shall
14 not be authorized, while the license or authority is
15 suspended or revoked, to be physically present at a wholesale
16 vehicle auction during the auctioning of vehicles.

17 (g) Public or retail vehicle auction activities.--

18 (1) Public or retail vehicle auctions shall not be
19 limited as to who may commission them to sell vehicles or who
20 may buy vehicles at public or retail auctions, provided that
21 any buyer or seller is not engaging in the business as a
22 dealer without a license or as any other person who would be
23 required to be licensed under this [act] chapter. Any person
24 who has had his license under this [act] chapter or authority
25 to engage as a dealer or salesperson in any other state or
26 jurisdiction suspended or revoked shall not be authorized,
27 while the license or authority is suspended or revoked, to be
28 physically present at a public or retail vehicle auction
29 during the auctioning of vehicles. Public or retail vehicle
30 auctions shall not be required to take title to the vehicles

1 they offer for sale or have their auctioneers licensed as
2 salespersons under this [act] chapter. Public or retail
3 vehicle auctions shall inquire of the seller of the vehicle
4 and, if applicable, disclose to potential purchasers material
5 information obtained from the seller regarding the vehicle
6 being offered for sale as is required of all sellers under
7 applicable Federal and Pennsylvania laws.

8 (2) Public or retail vehicle auctions shall ensure all
9 purchasers at the vehicle auction:

10 (i) show proof of identification at the time of
11 transfer of ownership;

12 (ii) sign the identified name to the transfer of
13 ownership documents;

14 (iii) pay any applicable tax imposed under Article
15 II of the act of March 4, 1971 (P.L.6, No.2), known as
16 the Tax Reform Code of 1971, unless otherwise exempted by
17 law; and

18 (iv) submit transfer of ownership documents to the
19 Department of Transportation as required under 75 Pa.C.S.
20 (relating to vehicles).

21 (g.1) Mobility vehicle dealers.--

22 (1) A licensed dealer classified as a mobility vehicle
23 dealer may do all of the following:

24 (i) Display, inventory, advertise, solicit,
25 demonstrate, sell, offer for sale or deliver new and used
26 mobility vehicles.

27 (ii) Arrange, negotiate and assist a customer
28 regarding the purchase of a mobility vehicle.

29 (iii) Sell and install equipment and accessories in
30 and provide services for mobility vehicles, in order to

1 meet the needs of persons with disabilities as drivers or
2 passengers.

3 (iv) Provide maintenance and repair services for
4 mobility vehicles.

5 (v) Acquire a new vehicle with a lowered floor or
6 frame or a raised roof and door in order to fit or equip
7 the vehicle for retail sale as a new mobility vehicle.

8 (2) A licensed dealer that is classified only as a
9 mobility vehicle dealer may not offer for sale or sell
10 vehicles which are not mobility vehicles.

11 (h) Notification of unlicensed persons.--Vehicle auctions
12 shall post a listing supplied by the board containing the names
13 of all licensees who are currently revoked or suspended and
14 persons who were penalized for unlicensed activity within the
15 past year.

16 Section 7. Sections 6, 7, 8, 9(a)(4) and (e)(3)(ii), 10, 11,
17 12, 12.1, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,
18 26, 27, 27.1, 28, 29, 30, 31 and 32 of the act are amended and
19 section 9 is amended by adding a subsection to read:

20 Section [6] 304. Biennial renewal.

21 Each license holder shall be required to renew his license
22 biennially; as a condition precedent to biennial renewal, the
23 license holder shall pay a biennial renewal fee and, in the case
24 of a salesperson or manufacturer's or distributor's
25 representative, he must be presently employed with a dealer,
26 manufacturer or distributor which has a current license. The
27 license holder shall comply with all requirements as set forth
28 through regulation by the board.

29 Section [7] 305. Enforcement.

30 Notwithstanding the enforcement powers granted to law

1 enforcement officers to institute summary criminal proceedings
2 pursuant to section [4(b)] 302(b), the enforcement of the laws
3 and rules and regulations governing practice under this [act]
4 chapter is primarily vested in the board with the following
5 additional powers and duties to:

6 (1) Inspect all license holders.

7 (2) Authorize investigations of alleged violations.

8 (3) Review and inspect all business records, documents
9 and files relating to practice under this [act] chapter.

10 (4) Subpoena witnesses.

11 (5) Take depositions of witnesses in the manner provided
12 for in civil actions in courts of record.

13 (6) Bring criminal prosecutions for unauthorized,
14 unlicensed and unlawful practice in accordance with the terms
15 and provisions of the act of October 15, 1980 (P.L.950,
16 No.164), known as the Commonwealth Attorneys Act.

17 (7) Obtain injunctions from a court of competent
18 jurisdiction against persons acting in violation of this
19 [act] chapter.

20 Section [8] 306. Protest hearing decision within 120 days
21 unless waived by the parties.

22 (a) Franchise protest hearings to be decided within 120 days
23 unless waived by the parties.--Any franchise establishment,
24 relocation, termination or failure to renew hearing based on a
25 protest by a dealer or distributor of any action by a
26 manufacturer or distributor alleged to be in violation of a
27 provision of this [act] chapter must be conducted and the final
28 determination made within 120 days after the protest is filed.
29 Unless waived by the parties, failure to do so will be deemed
30 the equivalent of a determination that the manufacturer or

1 distributor acted with good cause and, in the case of a protest
2 of a proposed establishment or relocation of a dealer under
3 section [27] 326, that good cause does not exist for refusing to
4 permit the proposed additional or relocated new vehicle dealer
5 unless such delay is caused by acts of the manufacturer,
6 distributor or the additional or relocating dealer. Any parties
7 to such a hearing shall have a right of review of the decision
8 in a court of competent jurisdiction pursuant to 2 Pa.C.S. § 701
9 (relating to scope of subchapter). If the board determined that
10 good cause does not exist for refusing to permit the proposed
11 additional or relocated new vehicle dealer and the manufacturer
12 or distributor thereafter enters into a franchise establishing
13 that new vehicle dealer, the manufacturer or distributor shall
14 not be liable for damages based upon such establishment even if
15 a court reverses the determination of the board.

16 (b) Procedure.--The procedure at the hearing shall be
17 governed by 1 Pa. Code Pt. II (relating to general rules of
18 administrative practice and procedure) with the following
19 exceptions:

20 (1) In the event that the protest involves a termination
21 or failure to renew the franchise of a new vehicle dealer,
22 the dealer shall be permitted to review a manufacturer's or
23 distributor's files related to that dealer upon written
24 request.

25 (2) The board may order on its own initiative, or
26 pursuant to a party's request, that part of the evidence for
27 hearing be submitted to it in the form of depositions.

28 (c) Reconsideration.--In the event a decision of the board
29 is remanded by a court of competent jurisdiction for further
30 action by the board, the board shall consider the action and

1 issue a final determination, not later than 120 days following
2 receipt of the record from such court, unless the 120-day time
3 period for the board to issue a final determination is waived or
4 extended by the parties.

5 (d) Dealer protest of automobile, motorcycle or truck
6 manufacturer act or omission.--

7 (1) Except for protests authorized under section [13 or
8 27] 312 or 326 and notwithstanding any other remedy available
9 under this [act] chapter, any new vehicle dealer who believes
10 that an automobile, motorcycle or truck manufacturer or
11 distributor with whom the new vehicle dealer holds a
12 franchise agreement has violated or is violating any
13 provision of this [act] chapter may file a protest with the
14 board setting forth the factual and legal basis for such
15 violation.

16 (2) The board shall issue a final determination within
17 120 days after the protest is filed, unless the 120-day time
18 period for the board to issue a final determination is waived
19 or extended by the parties.

20 (3) It shall be the burden of the automobile, motorcycle
21 or truck manufacturer to prove it has not violated any
22 provision of this [act] chapter as set forth in the protest
23 filed by the new vehicle dealer.

24 (4) The protested action shall not become effective
25 until the final determination is issued by the board and
26 shall not be effective thereafter if the board has determined
27 that there is good cause for not permitting the protested
28 action.

29 (5) The board shall be empowered to direct or require
30 the automobile, motorcycle or truck manufacturer or

1 distributor to perform such acts as necessary in order for
2 the manufacturer or distributor to comply with the provisions
3 of this [act] chapter.

4 Section [9] 307. Reimbursement for all parts and service
5 required by the manufacturer or distributor;
6 reimbursement audits.

7 (a) Manufacturers or distributors to notify dealers of their
8 obligations.--

9 * * *

10 (4) This subsection shall not apply to manufacturers or
11 distributors of manufactured housing [or recreational
12 vehicles].

13 * * *

14 (e) Warranty reimbursement and incentive or reimbursement
15 program approval and audits.--

16 * * *

17 (3) * * *

18 (ii) During the 30-day time period under
19 subparagraph (i), a new vehicle dealer may file with the
20 board a protest of the charge-backs as provided for
21 under section [8] 306. When such a protest is filed, the
22 board shall inform the manufacturer or distributor that a
23 timely protest has been filed and that the manufacturer
24 or distributor shall not charge back the new vehicle
25 dealer:

26 (A) until the board has held a hearing; or

27 (B) if the board has determined that there is
28 good cause for not permitting the charge-back of such
29 new vehicle dealer.

30 * * *

1 (g) Applicability.--This section shall not apply to
2 manufacturers or dealers of recreational vehicles.

3 Section [10] 308. Damage disclosure.

4 (a) Notice to dealer.--Each manufacturer or distributor of
5 new vehicles sold or transferred to a new vehicle dealer shall
6 notify the new vehicle dealer in writing prior to delivery of
7 the vehicle of any material damage to the vehicle which is known
8 to the manufacturer or distributor which was sustained or
9 incurred by the vehicle at any time after the manufacturing
10 process is complete but prior to delivery of the vehicle to the
11 dealer. A dealer may reject the delivery of a nonconforming
12 vehicle under the provisions of 13 Pa.C.S. (relating to
13 commercial code).

14 (b) Notice to purchaser.--When selling a new vehicle, each
15 new vehicle dealer shall notify the purchaser in writing at the
16 time of sale of any material damage sustained or incurred by the
17 vehicle at any time after the manufacturing process is complete
18 which is disclosed by the manufacturer to the new vehicle
19 dealer.

20 (c) Exemption.--This section shall not apply to
21 manufacturers and dealers of manufactured housing or to
22 manufacturers, distributors or dealers of motorcycles or
23 recreational vehicles.

24 (d) Other statutes and decisions.--Nothing in this section
25 shall be construed to diminish any obligation to provide notice
26 to the purchaser of a new vehicle which obligation is imposed by
27 any other provision of law or by any judicial decision,
28 including, but not limited to, the act of December 17, 1968
29 (P.L.1224, No.387), known as the Unfair Trade Practices and
30 Consumer Protection Law.

1 Section [11] 309. Mediation and arbitration.

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

3 (1) A dealer or distributor may not file a complaint,
4 petition or protest or bring an action in a court of
5 competent jurisdiction against a manufacturer or distributor
6 based on an alleged violation of this [act] chapter or in a
7 protest action under this [act] chapter regarding an
8 establishment, relocation or termination of a franchise
9 agreement unless the dealer or distributor serves a demand
10 for mediation upon the manufacturer or distributor before or
11 contemporaneous with the filing of the complaint, petition or
12 protest or the bringing of an action. A demand for mediation
13 shall be in writing and served upon the manufacturer or
14 distributor by certified mail at an address designated for
15 that manufacturer or distributor within records of the dealer
16 or distributor. The demand for mediation shall contain a
17 brief statement of the dispute and the relief sought by the
18 dealer or distributor filing the demand.

19 (2) Within 20 days after the date a demand for mediation
20 is served, the parties shall mutually select an independent
21 mediator and meet with that mediator for the purpose of
22 attempting to resolve the dispute. The meeting place shall be
23 in this Commonwealth in a location selected by the mediator.
24 The mediator may extend the date of the meeting for good
25 cause shown by either party or upon stipulation of both
26 parties.

27 (3) The service of a demand for mediation under
28 paragraph (1) shall stay the time for the filing of any
29 complaint, petition, protest or action under this [act]
30 chapter until representatives of both parties have met with a

1 mutually selected mediator for the purpose of attempting to
2 resolve the dispute. If a complaint, petition, protest or
3 action is filed before the meeting, the board or court shall
4 enter an order suspending the proceeding or action until the
5 meeting has occurred and may, upon written stipulation of all
6 parties to the proceeding or action that they wish to
7 continue to mediate under this subsection, enter an order
8 suspending the proceeding or action for as long a period as
9 the board or court considers appropriate. A suspension order
10 issued under this paragraph may be revoked upon motion of any
11 party or upon motion of the board or the court.

12 (4) The board shall encourage dealers, manufacturers and
13 distributors to establish, maintain and administer a panel of
14 mediators who have the character, ability and training to
15 serve as mediators and who have knowledge of the vehicle
16 industry.

17 (5) Mandatory mediation under this section shall not be
18 required of any of the following:

19 (i) A dealer seeking to dual two or more franchises
20 or a dealer seeking a relocation involving a request to
21 dual two or more franchises unless another dealer of the
22 same line-make has a right to protest the proposed
23 relocation under section [27] 326.

24 (ii) Manufacturers, distributors or dealers of
25 motorcycles.

26 (b) Arbitration of disputes between licensees.--After a
27 dispute arises, the licensees may voluntarily agree to submit a
28 dispute arising under this [act] chapter pertaining to a
29 complaint, petition, protest or action to binding or nonbinding
30 arbitration. Any arbitration proceeding shall be voluntary,

1 initiated by serving a written demand for arbitration on the
2 other party, and shall be conducted under the provisions of 42
3 Pa.C.S. Ch. 73 Subch. A (relating to statutory arbitration) and
4 administered by representatives of dealers, manufacturers or
5 distributors.

6 (c) Immunity and presumption of good faith by mediators and
7 arbitrators.--A mediator or arbitrator is immune from civil
8 liability for any good faith act or omission within the scope of
9 the mediator's or arbitrator's performance of his powers and
10 duties under this section. Every act or omission of a mediator
11 or arbitrator is presumed to be a good faith act or omission.
12 This presumption may be overcome only by clear and convincing
13 evidence.

14 (d) Recreational vehicles exempted.--This section shall not
15 apply to recreational vehicle manufacturers, distributors or
16 dealers.

17 Section [12] 310. Unlawful acts by manufacturers or
18 distributors.

19 (a) Unlawful coercive acts.--It shall be a violation for any
20 manufacturer, factory branch, distributor, field representative,
21 officer, agent or any representative whatsoever of such
22 manufacturer, factory branch or distributor licensed under this
23 [act] chapter to require, attempt to require, coerce or attempt
24 to coerce any new vehicle dealer in this Commonwealth to:

25 (1) Order or accept delivery of any new vehicle, part or
26 accessory thereof, equipment or any other commodity not
27 required by law which shall not have been voluntarily ordered
28 by the new vehicle dealer, except that this paragraph is not
29 intended to modify or supersede any terms or provisions of
30 the franchise requiring new vehicle dealers to market a

1 representative line of those vehicles which the manufacturer
2 or distributor is publicly advertising.

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

7 (3) Participate monetarily in an advertising campaign or
8 contest or to purchase unnecessary or unreasonable quantities
9 of any promotional materials, training materials, showroom or
10 other display decorations or materials at the expense of the
11 new vehicle dealer.

12 (4) Enter into any agreement with the manufacturer or to
13 do any other act prejudicial to the new vehicle dealer by
14 threatening to terminate or not renew a franchise or any
15 contractual agreement existing between the dealer and the
16 manufacturer or distributor, except that this paragraph is
17 not intended to preclude the manufacturer or distributor from
18 insisting on compliance with the reasonable terms or
19 provisions of the franchise or other contractual agreement
20 and notice in good faith to any new vehicle dealer of the new
21 vehicle dealer's violation of such terms or provisions shall
22 not constitute a violation of [the act] this chapter.

23 (5) Change the capital structure of the new vehicle
24 dealer or the means by or through which the new vehicle
25 dealer finances the operation of the dealership, provided
26 that the new vehicle dealer at all times meets any reasonable
27 capital standards determined by the manufacturer or
28 distributor in accordance with uniformly applied criteria,
29 and also provided that no change in the capital structure
30 shall cause a change in the principal management or have the

1 effect of a sale of the franchise without the consent of the
2 manufacturer or distributor. The consent shall be granted or
3 denied within 60 days of receipt of a written request from
4 the new vehicle dealer.

5 (6) (i) Refrain from participation in the management
6 of, investment in or the acquisition of any other line of
7 new vehicle or related products. This paragraph does not
8 apply unless the new vehicle dealer maintains a
9 reasonable line of credit for each make or line of new
10 vehicle, the new vehicle dealer remains in compliance
11 with the reasonable terms of the franchise agreement and
12 any reasonable facilities requirements of the
13 manufacturer or distributor, and no change is made in the
14 principal management of the new vehicle dealer. The
15 reasonable facilities requirements shall not include any
16 requirement that a new vehicle dealer establish or
17 maintain exclusive facilities, personnel or display space
18 when such requirements or any of them would be
19 unreasonable in light of economic conditions and would
20 not otherwise be justified by reasonable business
21 considerations.

22 (ii) (A) Nothing in this paragraph shall permit the
23 dualing or relocation and addition of a line-make to
24 the dealership facilities without the new vehicle
25 dealer providing written certification to the
26 manufacturer or distributor that the new vehicle
27 dealer, with the addition of a line-make by the new
28 vehicle dealer, will maintain a reasonable line of
29 credit for each make or line of new vehicle and the
30 new vehicle dealer will remain in compliance with the

1 reasonable terms of the franchise agreement and any
2 reasonable facilities requirements of the
3 manufacturer or distributor, excluding any exclusive
4 facility or nondualing requirements.

5 (B) The dealer shall provide the following
6 information:

7 (I) the address of the proposed new
8 location, if applicable;

9 (II) a brief description of the proposed
10 facility; and

11 (III) the owner of the proposed new
12 location.

13 (C) Any objection by the manufacturer or
14 distributor with regard to the dualing or relocation
15 and dualing of two or more franchises shall be
16 delivered to the dealer within 45 days of receipt of
17 the written certification from the new vehicle
18 dealer. Failure on the part of the manufacturer or
19 distributor to timely respond to a dualing or
20 relocation and dualing certification shall be deemed
21 to be an approval of the new vehicle dealer's
22 certification notice of dualing or relocation and
23 dualing of two or more franchises. The manufacturer
24 or distributor shall execute and deliver a franchise
25 reflecting the relocated address of the dealership
26 facilities to the new vehicle dealer within 30 days
27 of the date of the deemed approval.

28 (iii) A dealer may file a complaint, petition or
29 protest, or bring an action in a court of competent
30 jurisdiction against a manufacturer or distributor, based

1 on a denial of a request by a dealer to dual or relocate
2 and dual two or more franchises without first going
3 through mediation required under section [11] 309. If a
4 dualing or relocation and dualing denial protest is filed
5 with the board, a hearing shall be held within 45 days of
6 the protest's filing and a final determination issued by
7 the board within 90 days of the protest filing. The
8 burden of proof shall be on the manufacturer or
9 distributor to show that the dualing or relocation and
10 dualing is unreasonable. No automobile, motorcycle or
11 truck manufacturer or distributor may limit or restrict
12 the addition of a line-make to the dealership facilities
13 if the new vehicle dealer maintains a reasonable line of
14 credit for each make or line of new vehicle and the new
15 vehicle dealer remains in compliance with the reasonable
16 terms of the franchise agreement and any reasonable
17 facilities requirements of an automobile, motorcycle or
18 truck manufacturer or distributor. This paragraph shall
19 also apply if the dealer seeks to dual two or more line-
20 makes and no relocation will occur. This paragraph shall
21 not impair the rights of another dealer of the same line-
22 make to protest a proposed relocation under section [27]
23 326.

24 (7) Prospectively assent to a release, assignment,
25 novation, waiver or estoppel which would relieve any person
26 from liability to be imposed by this [act] chapter or to
27 require any controversy between a new vehicle dealer and a
28 manufacturer, distributor or representative to be referred to
29 any person other than the duly constituted courts of the
30 Commonwealth or the United States of America, if such

1 referral would be binding upon the new vehicle dealer. A
2 dealer and the manufacturer, distributor or representative,
3 by themselves or through their respective counsel, are
4 permitted to agree to execute a written agreement or to
5 arbitrate in a binding or nonbinding manner after a
6 controversy arises.

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

12 (8.1) Unreasonably expand, construct or significantly
13 modify facilities in light of the market and economic
14 conditions or require a separate facility for the sale or
15 service of a line-make of a new vehicle if the market and
16 economic conditions do not clearly justify the separate
17 facility.

18 (8.2) (i) Purchase a good or service from a vendor
19 selected, identified or designated by a manufacturer,
20 factory branch, distributor, distributor branch or an
21 affiliate of a manufacturer, factory branch, distributor,
22 distributor branch by agreement, program, incentive
23 provision or other method if expanding, constructing or
24 significantly modifying a facility without allowing the
25 dealer the option to obtain a good or service of
26 substantially similar quality from a vendor chosen by the
27 dealer and approved by the manufacturer, which approval
28 may not be unreasonably withheld.

29 (ii) Nothing under this paragraph shall be construed
30 to:

1 (A) Allow a dealer or vendor to eliminate or
2 impair a manufacturer's intellectual property rights,
3 including a manufacturer's intellectual property
4 rights in a trademark.

5 (B) Permit a dealer to erect or maintain signs
6 that do not conform to the intellectual property
7 usage guidelines of the manufacturer.

8 (9) Agree as a condition to granting or renewing a
9 franchise to waive, limit or disclaim a right that the dealer
10 may have to protest the establishment or relocation of
11 another vehicle dealer in the relevant market area as
12 provided in section [27] 326, unless such agreement is
13 voluntary.

14 (10) (i) Sell, offer to sell or sell exclusively an
15 extended service contract, extended maintenance plan or
16 similar product, such as gap products, offered, endorsed
17 or sponsored by the manufacturer or distributor by the
18 following means:

19 (A) By an act or statement that the manufacturer
20 or distributor will in any manner impact the dealer,
21 whether it is express or implied or made directly or
22 indirectly.

23 (B) By a contract, or an express or implied
24 offer of contract, made to the dealer on the
25 condition that the dealer shall sell, offer to sell
26 or sell exclusively an extended service contract,
27 extended maintenance plan or similar product offered,
28 endorsed or sponsored by the manufacturer or
29 distributor.

30 (C) By measuring the dealer's performance under

1 the franchise based on the sale of extended service
2 contracts, extended maintenance plans or similar
3 products offered, endorsed or sponsored by the
4 manufacturer or distributor.

5 (D) By requiring the dealer to actively promote
6 the sale of extended service contracts, extended
7 maintenance plans or similar products offered,
8 endorsed or sponsored by the manufacturer or
9 distributor.

10 (ii) Nothing in this paragraph shall prohibit a
11 manufacturer or distributor from providing incentive
12 programs to a new vehicle dealer who makes the voluntary
13 decision to offer to sell, sell or sell exclusively an
14 extended service contract, extended maintenance plan or
15 similar product offered, endorsed or sponsored by the
16 manufacturer or distributor.

17 (b) Violations.--It shall be a violation of this [act]
18 chapter for any manufacturer, factory branch, distributor, field
19 representative, officer, agent or any representative whatsoever
20 of such manufacturer, factory branch or distributor licensed
21 under this [act] chapter to:

22 (1) Delay, refuse or fail to deliver new vehicles or new
23 vehicle parts or accessories in a reasonable time and in
24 reasonable quantity relative to the new vehicle dealer's
25 facilities and sales potential after acceptance of an order
26 from a new vehicle dealer having a franchise for the retail
27 sale of any new vehicle sold or distributed of an order from
28 a new vehicle dealer having a franchise for the retail sale
29 of any new vehicle sold or distributed by the manufacturer or
30 distributor as are covered by such franchise, if such

1 vehicle, parts or accessories are publicly advertised as
2 being available for immediate delivery. There is no violation
3 if the failure is caused by acts or causes beyond the control
4 of the manufacturer or distributor.

5 (2) Unfairly discriminate among its new vehicle dealers
6 with respect to warranty, recall, service contract or any
7 other service required by the manufacturer or distributor
8 with regard to labor or parts reimbursement.

9 (3) Unreasonably withhold consent to the sale, transfer
10 or exchange of the franchise to a qualified buyer capable of
11 being licensed as a new vehicle dealer in this Commonwealth
12 who meets the manufacturer's or distributor's reasonable
13 requirements for appointment as a dealer.

14 (4) Unreasonably withhold consent to the relocation of
15 an existing new vehicle dealer. If the relocation involves
16 dualing of two or more franchises, the requirements of
17 subsection (a) (6) (ii) and (iii) shall apply and paragraph (5)
18 shall not apply.

19 (5) Fail to respond in writing to a request for consent
20 as specified in paragraphs (3) and (4) within 60 days of
21 receipt of a written request on the forms, if any, generally
22 utilized by the manufacturer or distributor for such purposes
23 and containing the information required. The failure to
24 respond within the time period set forth in this paragraph
25 shall be deemed to be approval of the request, and the
26 manufacturer or distributor shall execute and deliver a
27 franchise to the applicant within 30 days of the expiration
28 of this time period. A manufacturer or distributor shall
29 acknowledge in writing to the applicant the receipt of the
30 forms, and, if the manufacturer or distributor requires

1 additional information to complete its review, the
2 manufacturer or distributor shall notify the applicant within
3 15 days of the receipt of the forms. If the manufacturer or
4 distributor fails to request additional information from the
5 applicant within 15 days after receipt of the initial forms,
6 the 60-day time period for approval shall be deemed to run
7 from the initial receipt date. Otherwise, the 60-day time
8 period for approval shall run from receipt of the
9 supplemental requested information. In no event shall the
10 total time period for approval exceed 75 days from the date
11 of the receipt of the initial forms.

12 (6) Prevent or attempt to prevent by contract or
13 otherwise, any new vehicle dealer from changing the executive
14 management control of the new vehicle dealer unless the
15 manufacturer or distributor, having the burden of proof, can
16 show that such change of executive management will result in
17 executive management or control by a person or persons who
18 are not of good moral character or who do not meet
19 reasonable, preexisting, and, with consideration given to the
20 volume of sales and service of the dealership, uniformly
21 applied minimum business experience standards. Where the
22 manufacturer or distributor rejects a proposed change in
23 executive management control, the manufacturer or distributor
24 shall give written notice of its reasons to the dealer within
25 60 days of notice to the manufacturer by the dealer of the
26 proposed change; otherwise the change in the executive
27 management of the new vehicle dealer shall be presumptively
28 deemed approved.

29 (7) Offer in connection with a sale of a new vehicle or
30 vehicles to the Federal Government, the Commonwealth or any

1 political subdivision thereof, any discounts, refunds or any
2 other type of inducement to any new vehicle dealer without
3 making the same offer or offers available to all other of its
4 new vehicle dealers within this Commonwealth. This paragraph
5 shall not be construed to prevent the offering of incentive
6 programs or other discounts if the discounts are equally
7 available to all franchised vehicle dealers in this
8 Commonwealth on a proportionally equal basis.

9 (8) Fail to indemnify its franchised dealers,
10 notwithstanding the terms of any franchise agreement, against
11 any judgment for damages or settlement approved in writing by
12 the manufacturer or distributor, including, but not limited
13 to, court costs and reasonable attorney fees of the new
14 vehicle dealer, arising out of complaints, claims or
15 lawsuits, including, but not limited to, strict liability,
16 negligence, misrepresentation, express or implied warranty or
17 rescission of the sale as defined in 13 Pa.C.S. § 2608
18 (relating to revocation of acceptance in whole or in part) to
19 the extent that the judgment or settlement relates solely to
20 the alleged defective or negligent functions by the
21 manufacturer or distributor beyond the control of the dealer.

22 (9) Sell or exchange with a second or final stage
23 manufacturer, retail consumer or end user except through a
24 licensed new vehicle dealer. This paragraph shall not apply
25 to manufacturer or distributor sales of new vehicles to the
26 Federal Government, charitable organizations and employees of
27 the manufacturer.

28 (10) (i) Modify a franchise during the term of the
29 franchise or upon its renewal if the modification
30 substantially and adversely affects the new vehicle

1 dealer's rights, obligations, investment or return on
2 investment without giving 60 days' written notice of the
3 proposed modification to the new vehicle dealer unless
4 the modification is required by law, court order or the
5 board. Within the 60-day notice period, the new vehicle
6 dealer may file with the board and serve notice upon the
7 manufacturer or distributor a protest requesting a
8 determination of whether there is good cause for
9 permitting the proposed modification. The board shall
10 promptly schedule a hearing and decide the matter within
11 180 days from the date the protest is filed. Multiple
12 protests pertaining to the same proposed modification
13 shall be consolidated for hearing. The proposed
14 modification shall not take effect pending the
15 determination of the matter. In determining whether there
16 is good cause for permitting a proposed modification, the
17 board shall consider any relevant factors, including, but
18 not limited to:

19 [(A)] (i) The reasons for the proposed
20 modification.

21 [(B)] (ii) Whether the proposed modification is
22 applied to or affects all new vehicle dealers in a
23 nondiscriminatory manner.

24 [(C)] (iii) Whether the proposed modification
25 will have a substantial and adverse effect upon the
26 new vehicle dealer's investment or return on
27 investment.

28 [(D)] (iv) Whether the proposed modification is
29 in the public interest.

30 [(E)] (v) Whether the proposed modification is

1 necessary to the orderly and profitable distribution
2 of products by the manufacturer or distributor.

3 [(F)] (vi) Whether the proposed modification is
4 offset by other modifications beneficial to the new
5 vehicle dealer.

6 [(ii) This paragraph shall not apply to recreational
7 vehicle manufacturers, distributors or dealers.]

8 (11) Fail or refuse to offer to its new vehicle dealers
9 all new model vehicles manufactured for that line-make
10 franchise or require any of its new vehicle dealers to pay an
11 unreasonable fee, unreasonably remodel or renovate the new
12 vehicle dealer's existing facilities, unreasonably purchase
13 or construct a new facility, unreasonably purchase parts,
14 supplies, tools, equipment, operational services, other
15 merchandise or unreasonably participate in training programs
16 in order to receive any new model vehicles, parts or
17 accessories. It shall not be a violation of this paragraph if
18 the manufacturer or distributor fails to supply new vehicle
19 dealers with model vehicles, parts or accessories due to
20 circumstances beyond the control of the manufacturer or
21 distributor, including, but not limited to, strike or labor
22 difficulty, shortage of materials, freight embargo or
23 temporary lack of capacity.

24 (12) Operate a system for the allocation of new vehicles
25 which is not reasonable or fair to a new vehicle dealer. Upon
26 the written request of any of its new vehicle dealers, a
27 manufacturer or distributor shall disclose to the new vehicle
28 dealer the method on which new vehicles are allocated among
29 the new vehicle dealers of the same line-make. The
30 manufacturer distributor has the burden of establishing the

1 fairness of its allocation.

2 (13) Own, operate or control, either directly or
3 indirectly, any vehicle warranty facility. Nothing in this
4 subsection shall prohibit any manufacturer or distributor
5 from owning, operating or controlling any warranty facility
6 for warranty repairs on vehicles owned or operated by the
7 manufacturer or distributor.

8 (14) Compel a dealer through a finance subsidiary of the
9 manufacturer or distributor to agree to unreasonable
10 operating requirements or to directly or indirectly terminate
11 a new vehicle dealer through the actions of a finance
12 subsidiary of the manufacturer or distributor. This paragraph
13 shall not limit the right of a financing entity to engage in
14 business practices in accordance with the trade of retail or
15 wholesale vehicle financing.

16 (15) Use any subsidiary corporation, affiliated
17 corporation or any other controlled corporation, partnership,
18 association, entity or person to accomplish what would
19 otherwise be illegal conduct under this [act] chapter on the
20 part of the manufacturer or distributor.

21 (16) Release to any third party any customer information
22 which has been provided by the new vehicle dealer to the
23 manufacturer or distributor if the customer objects in
24 writing to releasing the information, unless the information
25 is necessary for the manufacturer or distributor to meet its
26 obligations to customers or new vehicle dealers under
27 requirements imposed by Federal or State law.

28 (17) Require or coerce or attempt to require or coerce a
29 new vehicle dealer to pay attorney fees of the manufacturer
30 or distributor related to hearings and appeals brought under

1 this [act] chapter.

2 (18) Vary the price charged to any of its new vehicle
3 dealers, which has the effect of causing a difference in the
4 price of any similarly equipped new vehicle to its new
5 vehicle dealers or to the ultimate purchaser. This paragraph
6 shall not be construed to prevent the offering of incentive
7 programs or other discounts if the incentive or discounts are
8 available to all competing new vehicle dealers of the same
9 line-make in this Commonwealth on a proportionately equal
10 basis.

11 (19) Directly or indirectly condition any of the
12 following actions on a dealer, prospective dealer or owner of
13 an interest in a dealership franchise or facility to enter
14 into a site-control agreement or exclusive use agreement:

15 (i) awarding of a franchise to a prospective dealer;

16 (ii) adding of a line-make or franchise to an
17 existing dealer's franchise or facility;

18 (iii) renewing of an existing dealer's franchise;

19 (iv) approving of the relocation of an existing
20 dealer's franchise or facility; or

21 (v) approving of the sale or transfer of a dealer's
22 ownership of a franchise or facility.

23 Nothing in this paragraph prohibits a dealer, prospective
24 dealer or owner of an interest in a dealership franchise or
25 facility from voluntarily entering into such an agreement for
26 other consideration. However, a provision contained in an
27 agreement which is not voluntarily entered into by a dealer,
28 prospective dealer or owner of an interest in a dealership
29 franchise or facility on or after the effective date of this
30 paragraph that is inconsistent with the provisions of this

1 section shall be a violation of this [act] chapter.

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

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

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

10 (ii) operate or control a dealer licensed under this
11 [act] chapter which is engaging in the business of
12 buying, selling or exchanging vehicles.

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

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

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

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

1 controlled dealer. An application for an extension is subject
2 to protest by a dealer of the same line-make who is within
3 the ten-mile radius of the manufacturer or distributor owned,
4 operated or controlled dealer.

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

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

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

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

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

28 (6) The following shall apply:

29 (i) A manufacturer or distributor may own, operate
30 or control not more than five new vehicle dealerships

1 trading solely in electric vehicles, as defined in 75
2 Pa.C.S. § 102 (relating to definitions), that are not
3 sold as new vehicles by a licensed independent new
4 vehicle dealer pursuant to an existing franchise with a
5 manufacturer or distributor, if each of the following
6 conditions are met:

7 (A) Each of the new vehicle dealerships selling
8 the manufacturer's new motor vehicles in this
9 Commonwealth trade exclusively in the manufacturer's
10 line-make.

11 (B) Each of the new vehicle dealerships selling
12 the manufacturer's motor vehicles in this
13 Commonwealth are determined to be in compliance with
14 this [act] chapter.

15 (C) Either of the following apply:

16 (I) The manufacturer, distributor or a
17 subsidiary, affiliate or controlled entity has
18 not acquired, nor does it hold a controlling
19 interest in another manufacturer or distributor,
20 required to be licensed under this [act] chapter.

21 (II) If a controlling interest is acquired,
22 the manufacturer, distributor or a subsidiary,
23 affiliate or controlled entity may not continue
24 to operate or control a new vehicle dealership
25 under this subsection for a period not more than
26 12 months from the date it acquired the
27 controlling interest.

28 (D) Either of the following apply:

29 (I) A controlling interest in the original
30 manufacturer, distributor or any subsidiary,

1 affiliate or controlled entity was not
2 transferred, sold or conveyed to another
3 manufacturer, distributor, person or entity
4 required to be licensed under this [act] chapter.

5 (II) If a controlling interest is
6 transferred, sold or conveyed to another
7 manufacturer, distributor, person or entity
8 required to be licensed under this [act] chapter,
9 the entity may not continue to operate or control
10 a new vehicle dealership under this subsection
11 for a period not more than 12 months from the
12 date it acquired the controlling interest.

13 (E) The manufacturer shall have continuously
14 offered electric vehicles for sale for a period of
15 not less than 12 months prior to the effective date
16 of this clause.

17 (ii) Nothing under this [act] chapter shall prohibit
18 a manufacturer operating or controlling a new vehicle
19 dealership under this paragraph from owning, operating or
20 controlling a warranty facility for warranty repairs on
21 the manufacturer's line-make of vehicles.

22 (7) Nothing under this subsection shall prohibit the
23 sale or lease of used vehicles obtained as a result of a
24 trade or return of a vehicle during the purchase of a new
25 vehicle under paragraph (6) at a manufacturer's licensed
26 location.

27 (d) Applicability.--

28 (1) Subsections (b)(11) through (17) and (c) shall not
29 apply to manufacturers, distributors or dealers of
30 manufactured housing [or recreational vehicles].

1 (1.1) This section shall not apply to manufacturers,
2 distributors or dealers of recreational vehicles.

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

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

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

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

17 Section [12.1] 311. Area of responsibility.

18 (a) General rule.--It shall be a violation of this [act]
19 chapter for any manufacturer or distributor, officer, agent or
20 any representative of a manufacturer or distributor to
21 unreasonably alter a new vehicle dealer's area of
22 responsibility. The following shall apply:

23 (1) Advance notice from the manufacturer of an
24 alteration of a dealer's area of responsibility shall be
25 given at least 60 days before the effective date of the
26 alteration. The notice shall include an explanation of the
27 basis for the alteration.

28 (2) At any time before the effective date of such
29 alteration of a dealer's area of responsibility, and after
30 the completion of any internal appeal process pursuant to the

1 manufacturer's or distributor's policy manual, the dealer may
2 file a protest as provided for under section [8] 306. In the
3 event a protest is filed, no such alteration of a dealer's
4 area of responsibility shall become effective until final
5 determination by the board.

6 (3) If a dealer protests under paragraph (2), the burden
7 of proof shall be on the manufacturer to show that the
8 dealer's area of responsibility is reasonable and justifiable
9 in light of the market conditions.

10 (4) If a new vehicle dealer's area of responsibility is
11 altered, the manufacturer shall allow 18 months for the
12 dealer to penetrate the market and to become sales effective
13 prior to taking negative legal action claiming a breach or
14 nonperformance of the dealer's sales performance
15 responsibilities against the dealer.

16 (b) Exception.--This section shall not apply to recreational
17 vehicle manufacturers, distributors or dealers.

18 Section [13] 312. Termination of franchises.

19 (a) Terminations.--It shall be a violation of this [act]
20 chapter for any manufacturer or distributor, officer, agent or
21 any representative whatsoever to unfairly, without due regard to
22 the equities of said dealer and without just cause, terminate or
23 fail to renew the franchise of any vehicle dealer; or being a
24 manufacturer, to unfairly, without due regard to the equities of
25 a distributor and without just cause, terminate or fail to renew
26 the franchise of any distributor. The manufacturer or
27 distributor shall not meet its burden of proof to terminate or
28 fail to renew the franchise if the acts of the manufacturer or
29 distributor, in whole or in significant part, caused the dealer
30 or distributor to be unable to comply substantially with the

1 reasonable and material requirements of the franchise.

2 (b) Mutual agreement of termination filing.--All existing
3 dealers' franchises shall continue in full force and operation
4 under a newly appointed distributor on the termination of an
5 existing distributor unless a mutual agreement of termination is
6 filed with the board between the newly appointed distributor and
7 such dealer.

8 (c) Notification of termination.--Not less than 60 days
9 advance notice of such termination or failure to renew shall be
10 given the dealer or distributor prior to the effective date
11 thereof unless the nature or character of the reason for
12 termination or failure to renew is such that the giving of such
13 notice would not be in the public interest. A copy of the notice
14 shall also be provided to the board.

15 (1) The 60-day notice period required by this subsection
16 may be reduced to not less than 15 consecutive business days
17 if the ground for termination or failure to renew is:

18 (i) insolvency of the dealer or filing of any
19 petition by or against the dealer under any bankruptcy or
20 receivership law;

21 (ii) failure of the dealer to conduct customary
22 sales and service operations during business hours for
23 seven consecutive business days, except in circumstances
24 beyond the direct control of the dealer;

25 (iii) conviction of the dealer, or any owner
26 thereof, of any felony which is punishable by
27 imprisonment;

28 (iv) suspension or revocation of any license which
29 the new vehicle dealer is required to have to operate a
30 dealership; or

1 (v) based on a determination that there was a
2 fraudulent misrepresentation by the dealer to the
3 manufacturer or distributor which is material to the
4 franchise.

5 (2) The 60-day notice period under this subsection is
6 not required if the new vehicle dealer or distributor waives
7 it voluntarily in writing.

8 (d) Appeals.--At any time before the effective date of such
9 termination or failure to renew, the dealer or distributor may
10 appeal to the board for a hearing on the merits, and following
11 due notice to all parties concerned, such hearing shall be
12 promptly held. No such termination or failure to renew shall
13 become effective until final determination of the issue by the
14 board.

15 (e) Burden of proof and just cause terminations on appeal.--
16 In the event of a dealer or distributor appeal of the
17 termination or failure to renew of its franchise, the burden of
18 proof shall be on the manufacturer or distributor to show that
19 such termination or failure to renew was for just cause. Any
20 termination or failure to renew which is subject to section [14]
21 313 shall not be subject to this subsection.

22 (f) Exception.--This section shall not apply to recreational
23 vehicle manufacturers, distributors or dealers.

24 Section [14] 313. Industry reorganization.

25 (a) Violation.--

26 (1) It shall be a violation of this [act] chapter for a
27 manufacturer or distributor directly or indirectly or through
28 any officer, agent or employee to terminate or fail to renew
29 a franchise of a new vehicle dealer in connection with:

30 (i) any change in ownership or control of all or any

1 part of the manufacturer's or distributor's business
2 whether by sale or transfer of assets, corporate stock or
3 other equity interest; assignment; merger; consolidation;
4 combination; joint venture; redemption; operation of law;
5 or otherwise; or

6 (ii) the termination, suspension or cessation of all
7 or any part of the manufacturer's or distributor's
8 business operations except for a termination of a part of
9 the manufacturer's or distributor's business operations
10 throughout the United States that is not otherwise part
11 of any change in ownership or control of the
12 manufacturer's or distributor's business.

13 (2) Paragraph (1) shall not apply if:

14 (i) a manufacturer or distributor offers a dealer a
15 replacement franchise with reasonable terms or
16 conditions; or

17 (ii) the manufacturer or distributor, within 90 days
18 of the effective date of the termination or failure to
19 renew, compensates the dealer in an amount at least
20 equivalent to the higher of the fair market value of the
21 franchise or portion of the franchise terminated or
22 failed to be renewed on the date the manufacturer or
23 distributor announces the act that results in the
24 termination or nonrenewal of the franchise or the date on
25 which the notice of termination or nonrenewal of the
26 franchise is issued.

27 (3) If the manufacturer or distributor either or both:

28 (i) authorizes the dealer to continue servicing and
29 supplying parts, including warranty service and parts,
30 for any goods or services marketed by the dealer pursuant

1 to the franchise for a period of not less than five years
2 from the effective date of the termination or failure to
3 renew and continues to reimburse the dealer for warranty
4 parts and service at the same prices and terms as
5 franchised dealers for the manufacturer or distributor;

6 (ii) continues to supply the dealer with replacement
7 parts for any goods or services marketed by the dealer
8 pursuant to the franchise for a period of not less than
9 five years from the effective date of the termination or
10 failure to renew at the same prices and terms as

11 franchised dealers for the manufacturer or distributor;

12 and if a dealer chooses to continue either or both such parts
13 and service operation under subparagraph (i) or (ii), the
14 fair market value compensation of the franchise shall be
15 reduced to reflect the value of continuing either or both
16 such parts and service operation.

17 (b) Acts affecting franchise.--For purposes of subsection

18 (a), the termination or discontinuation of a series, line, brand
19 or class of new vehicle marketed by a manufacturer or
20 distributor as a distinct series, line, brand or class shall be
21 deemed to be the termination or nonrenewal of a franchise even
22 if said series, line, brand or class of new vehicle is part of a
23 franchise including other series, lines, brands or classes of
24 new vehicle, provided that nothing in this subsection shall be
25 construed as prohibiting a manufacturer or distributor from
26 changing, adding or deleting models, specifications, model
27 names, numbers or identifying marks or similar characteristics
28 of the new vehicles it markets, provided that such change,
29 addition or deletion does not result in the termination or
30 discontinuance of a distinct series, line, brand or class of new

1 vehicle.

2 (c) Disputes.--Any dispute arising between a manufacturer or
3 distributor and a dealer under this section involving the
4 determination of the fair market valuation of a franchise shall
5 be determined by a court of competent jurisdiction and not by
6 the board.

7 (d) Exemption.--This section shall not apply to motorcycle
8 or recreational vehicle manufacturers, distributors or dealers.
9 Section [15] 314. Succession to franchise ownership.

10 (a) Succession of ownership interest.--Notwithstanding the
11 terms of any franchise, any owner of a new vehicle dealership
12 may appoint, by will or any other written instrument, a
13 designated family member, the spouse, child or grandchild,
14 spouse of a child or grandchild, brother, sister or parent of
15 the dealer owner, or qualified manager, who has been employed at
16 the dealership for at least two years, to succeed to the
17 ownership interest of such owner in the new vehicle dealership.

18 (b) Consent to succession on part of manufacturer or
19 distributor.--Notwithstanding the terms of any franchise, unless
20 there exists good cause to withhold consent to succession on the
21 part of the manufacturer or distributor, any designated family
22 member or qualified manager of the franchise location in
23 question of a retiring, deceased or incapacitated owner of a new
24 vehicle dealership may succeed to the ownership interest of such
25 owner under the existing franchise, provided:

26 (1) The designated family member or qualified manager
27 furnishes written notice to the manufacturer or distributor
28 of his or her intention to succeed to the ownership of the
29 new vehicle dealership within 60 days after the owner's
30 retirement, death or incapacity.

1 (2) The designated family member or qualified manager
2 agrees to be bound by all then existing terms and conditions
3 of the franchise.

4 (c) Submission of personal and financial information.--The
5 manufacturer or distributor may request, and the designated
6 family member or qualified manager shall promptly provide, such
7 personal and financial information as is reasonably necessary to
8 determine whether the succession will be honored.

9 (d) Withholding consent to succession.--If a manufacturer or
10 distributor believes that good cause exists to withhold consent
11 to the succession to the ownership of a new vehicle dealership
12 by a designated family member or qualified manager of a
13 retiring, deceased or incapacitated owner of a new vehicle
14 dealership under the existing franchise, the manufacturer or
15 distributor must serve written notice on the designated family
16 member or qualified manager and on the board of its refusal to
17 honor the succession and intent to discontinue the existing
18 franchise with the new vehicle dealer. Such notice shall be
19 served no later than 60 days after the manufacturer's or
20 distributor's receipt of:

21 (1) notice of the designated family member's or
22 qualified manager's intent to succeed to the ownership of the
23 new vehicle dealer; or

24 (2) any personal or financial information requested by
25 the manufacturer or distributor.

26 (e) Notice requirements.--The notice in subsection (d) shall
27 state the specific grounds to withhold consent to honor the
28 succession and the manufacturer's or distributor's intent to
29 discontinue the franchise with the new vehicle dealer no sooner
30 than 60 days after the date the notice is served. The reasons

1 given for the disapproval or any explanation of those reasons by
2 the manufacturer or distributor shall not subject the
3 manufacturer or distributor to any civil liabilities unless the
4 reasons given or explanations made are malicious and published
5 with the sole intent to cause harm to the dealer or successor.
6 If the notice of refusal and discontinuance is not timely and
7 properly served, the franchise shall continue in effect, subject
8 to termination only as otherwise provided under this [act]
9 chapter.

10 (f) Protest requirements upon withholding of consent.--
11 Within 30 days after receipt of such notice or within 30 days
12 after the end of any appeal procedure provided by the
13 manufacturer or distributor, whichever is greater, the
14 designated family member or qualified manager may file with the
15 board to protest the withholding the consent to honor the
16 succession. When a protest is filed, the board shall promptly
17 notify the manufacturer or distributor that a timely protest has
18 been filed and that such manufacturer or distributor shall not
19 terminate or discontinue the existing franchise until the board
20 has held a hearing and issued a written decision within 120 days
21 of the filing of the protest nor thereafter, unless the board
22 determines that there is good cause for not permitting the
23 succession.

24 (g) Conflicts.--This [act] chapter shall not preclude the
25 owner of a new vehicle dealership from designating any person as
26 his or her successor by written instrument filed with the
27 manufacturer or distributor. In the event of any conflict
28 between such a written instrument which has not been revoked by
29 written notice from the owner to the manufacturer or
30 distributor, and this section, the written instrument shall

1 govern.

2 (h) Restriction.--This section shall not apply if the
3 successor will not agree to comply with an existing agreement
4 pertaining to transfer of ownership made between the
5 manufacturer or distributor and the dealer transferor or with a
6 new agreement containing substantially the same terms.

7 (i) Exception.--This section shall not apply to recreational
8 vehicle manufacturers, distributors or dealers.

9 Section [16] 315. Manufacturer right of first refusal.

10 A manufacturer or distributor shall be permitted to enact a
11 right of first refusal to acquire the new vehicle dealer's
12 assets or ownership in the event of a proposed change of all or
13 substantially all ownership or transfer of all or substantially
14 all dealership assets if all of the following requirements are
15 met:

16 (1) To exercise its right of first refusal, the
17 manufacturer or distributor must notify the dealer in writing
18 within the 60-day or 75-day time limitations established
19 under section [12(b)(5)] 310(b)(5).

20 (2) The exercise of the right of first refusal will
21 result in the dealer and dealer's owners receiving the same
22 or greater consideration as they have contracted to receive
23 in connection with the proposed change of all or
24 substantially all ownership or transfer of all or
25 substantially all dealership assets. In that regard, the
26 following shall apply:

27 (i) The manufacturer or distributor shall have the
28 right to and shall assume the dealer's lease for, or
29 acquire the real property on which the franchise is
30 conducted, on the same terms as those on which the real

1 property or lease was to be sold or transferred to the
2 proposed new owner in connection with the sale of the
3 franchise, unless otherwise agreed to by the dealer and
4 manufacturer or distributor. The manufacturer or
5 distributor shall have the right to assign the lease or
6 to convey the real property.

7 (ii) The manufacturer or distributor shall assume
8 all of the duties, obligations and liabilities contained
9 in the agreements that were to be assumed by the proposed
10 new owner and with respect to which the manufacturer or
11 distributor exercised the right of first refusal,
12 including the duty to honor all time deadlines in the
13 underlying agreements, provided that the manufacturer or
14 distributor has knowledge of such obligations at the time
15 of the exercise of the right of first refusal. Failure by
16 an assignee of the manufacturer or distributor to
17 discharge such obligations shall be deemed a failure by
18 the manufacturer or distributor under this subsection.

19 (3) The proposed change of all or substantially all
20 ownership or transfer of all or substantially all dealership
21 assets does not involve the transfer of assets or the
22 transfer or issuance of stock by the dealer or one or more
23 dealer owners to a designated family member or members, the
24 spouse, child or grandchild, spouse of a child or grandchild,
25 brother, sister or parent of the dealer owner, of one or more
26 dealer owners or to a qualified manager or to a partnership
27 or corporation controlled by such persons.

28 (4) The manufacturer or distributor agrees to pay the
29 reasonable expenses, including reasonable attorney fees which
30 do not exceed the usual, customary and reasonable fees

1 charged for similar work done for other clients, incurred by
2 the proposed new owner and transferee prior to the
3 manufacturer's or distributor's exercise of its right of
4 first refusal in negotiating and implementing the contract
5 for the proposed change of all or substantially all ownership
6 or transfer of all or substantially all dealership assets.
7 Notwithstanding the foregoing, no payment of such expenses
8 and attorney fees shall be required if the dealer has not
9 submitted or caused to be submitted an accounting of those
10 expenses within 20 days of the dealer's receipt of the
11 manufacturer's or distributor's written request for such an
12 accounting. Such an accounting may be requested by a
13 manufacturer or distributor before exercising its right of
14 first refusal.

15 Section [17] 316. Manufacturer or distributor repurchase of
16 inventory and equipment.

17 (a) Return of property for repurchase.--A new vehicle dealer
18 shall return property, including, but not limited to, vehicle
19 inventory, parts, equipment, tools and signs, as permitted under
20 this section or as set forth in the franchise agreement, to the
21 manufacturer or distributor within 90 days of the effective date
22 of any termination or nonrenewal of a franchise or upon a
23 termination or cessation of a part of a manufacturer's or
24 distributor's business operations throughout the United States
25 which is not part of any change in ownership, operation or
26 control of all or any part of the manufacturer's or
27 distributor's business under section [14] 313. The manufacturer
28 or distributor shall supply the new vehicle dealer with
29 instructions on the method by which the new vehicle dealer must
30 return the property to the manufacturer or distributor. Within

1 60 days of tender of the property to the manufacturer or
2 distributor, the manufacturer or distributor, including medium
3 and heavy-duty truck component and engine manufacturers or
4 distributors who provide integral parts of vehicles or provide
5 major components by selling directly to dealers, shall
6 repurchase from the new vehicle dealer and remit payment to the
7 new vehicle dealer in accordance with their respective interest
8 in:

9 (1) Any new, undamaged and unsold vehicle inventory,
10 whether acquired from the manufacturer or distributor or from
11 another dealer of the same line-make in the ordinary course
12 of business within 18 months of the termination date,
13 provided the vehicle has less than 750 miles registered on
14 the odometer, not including mileage incurred in delivery from
15 the manufacturer or in transporting the vehicle between
16 dealers for sale, at the dealer's net acquisition cost, plus
17 any cost to the dealer for returning the vehicle inventory to
18 the manufacturer or distributor. A dealer shall be entitled
19 to the payment under this paragraph for new and undamaged
20 motor vehicles having a gross vehicle weight rating of at
21 least 10,001 pounds of current and two prior model years as
22 determined on a model-by-model basis within the line-make.

23 (2) All new, unused, undamaged parts listed in the
24 current price catalog acquired from a manufacturer or
25 distributor or a source approved or recommended by the
26 manufacturer or distributor at the dealer price listed in the
27 current parts catalog, less applicable allowances, plus 5% of
28 the catalog price of the part for the cost of packing and
29 returning the parts to the manufacturer or distributor.

30 Reconditioned or core parts shall be valued at their core

1 value, the price listed in the current parts catalog or the
2 amount paid for expedited return of core parts, whichever is
3 higher.

4 (3) Any special tools or equipment offered for sale
5 during the three years preceding termination or nonrenewal
6 and each trademark or trade name bearing signs which was
7 recommended or required by the manufacturer or distributor at
8 fair market value at the time the notice of termination or
9 nonrenewal is given.

10 In the event the inventory is subject to a security interest,
11 the manufacturer may make payment jointly to the dealer and the
12 holder of the security interest.

13 (b) Failure to pay sums due.--A manufacturer or distributor
14 who fails to pay those sums due the dealer within the prescribed
15 time or at such time as the dealer proffers good title prior to
16 the prescribed time for payment is liable to the new vehicle
17 dealer for:

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

20 (2) interest on the amount due, calculated at the rate
21 applicable to a judgment of court; and

22 (3) reasonable attorney fees and costs.

23 (c) Limited applicability.--This section shall not apply to
24 manufacturers, distributors or dealers of recreational vehicles
25 or manufactured housing, nor shall it apply to motorcycle
26 manufacturers, distributors or dealers except when the
27 unilateral termination or failure to renew is by the
28 manufacturer or distributor.

29 Section [18] 317. Reimbursement of rental costs for dealer
30 facility.

1 (a) Reimbursement of rental costs.--In the event of a
2 termination or nonrenewal under this [act] chapter, except for
3 termination or nonrenewal under section [14] 313, the
4 manufacturer or distributor shall, at the request and option of
5 the new vehicle dealer, also pay to the new vehicle dealer:

6 (1) a sum equivalent to rent for the unexpired term of
7 the lease or one year, whichever is less, or such longer term
8 as provided in the franchise, if the new vehicle dealer is
9 leasing the new vehicle dealership facilities from a lessor
10 other than the manufacturer or distributor; or

11 (2) a sum equivalent to the reasonable rental value of
12 the new vehicle dealership facilities for one year or until
13 the facilities are leased or sold, whichever is less, if the
14 new vehicle dealer owns the new vehicle dealership
15 facilities.

16 (b) Extent of requirement.--The rental payment required
17 under subsection (a) is only required to the extent that the
18 facilities were used for activities under the franchise and only
19 to the extent the facilities were not leased for unrelated
20 purposes. If payment under subsection (a) is made, the
21 manufacturer or distributor is entitled to possession and use of
22 the new vehicle dealership facilities for the period rent is
23 paid.

24 (c) Exemption.--This section shall not apply to motorcycle
25 or recreational vehicle manufacturers, distributors or dealers.
26 Section [19] 318. Grounds for disciplinary proceedings.

27 In addition to any criminal or civil penalties otherwise
28 provided in this act, the board shall have the power to formally
29 reprimand, suspend or revoke any license or refuse to issue or
30 renew any license of an applicant or licensee or a person

1 required to be licensed under this act, if after due notice of
2 and hearing, the person charged is found in violation of or
3 fails to carry out the acts and procedures set forth in this act
4 or is found guilty of committing or attempting to commit any of
5 the acts set forth in section [23] 322 or any of the following
6 acts:

7 (1) Having had a license revoked or suspended by the
8 Commonwealth or another state based on grounds similar to
9 those which in this Commonwealth allow disciplinary
10 proceedings, in which case the record of such revocation or
11 suspension shall be conclusive evidence.

12 (2) Make any substantial misrepresentation of material
13 facts.

14 (3) Make any false promise of a character likely to
15 influence, persuade or induce the sale of a vehicle.

16 (4) Being a vehicle dealer or salesperson, having within
17 five years prior to the application for or issuance of a
18 license or while his current license is in force pleaded
19 guilty, entered a plea of nolo contendere or been found
20 guilty in a court of competent jurisdiction in this or any
21 other state or Federal jurisdiction of forgery, embezzlement,
22 obtaining money under false pretenses, extortion, conspiracy
23 to defraud, bribery, odometer tampering or any other crime
24 involving moral turpitude.

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

28 (6) Having engaged in false, deceptive or misleading
29 advertising of vehicles.

30 (7) Having committed any act or engaged in conduct in

1 connection with the sale of vehicles which clearly
2 demonstrates unprofessional conduct or incompetency to
3 operate as a licensee under this act.

4 (8) Having made a material misstatement in application
5 for licensure.

6 (9) Having set up, promoted or aided in promotion of a
7 plan by which vehicles are sold to a person for consideration
8 and upon the further consideration that the purchaser agrees
9 to secure one or more persons to participate in the plan by
10 respectively making a similar purchase and in turn agreeing
11 to secure one or more persons likewise to join in said plan,
12 each purchaser being given the right to secure money,
13 credits, goods or something of value, depending upon the
14 number of persons joining in the plan.

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

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

22 (ii) Licensed motorcycle dealers are permitted to
23 buy, sell, exchange, trade or otherwise deal in
24 motorcycles on Sunday without being subject to
25 prosecution under this paragraph.

26 (11) Being a dealer or broker who advertises or
27 otherwise holds out to the public that he is selling new
28 vehicles for which he does not hold a franchise agreement in
29 writing with a manufacturer or distributor giving the dealer
30 authority to sell the particular line-make of new vehicles.

1 (12) Being a dealer or broker who sells new vehicles for
2 which he does not hold a franchise agreement in writing with
3 a manufacturer or distributor giving the dealer authority to
4 sell the particular line-make of new vehicles.

5 (13) Failing to take immediate remedial action when the
6 dealer knows that someone in his direct employ or someone who
7 renders vehicle-related services to the dealer for
8 consideration, has unlawfully tampered with the odometer of a
9 vehicle in his care, custody or control or which has been
10 sold or exchanged by the dealer. For the purpose of this
11 paragraph, remedial action shall be defined as at least
12 reporting the incident in writing to the Pennsylvania State
13 Police or the board.

14 (14) Engaging in the business for which such licensee is
15 licensed without at all times maintaining an established
16 place of business as required.

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

19 (16) Having had his vehicle business registration plates
20 (dealer identification number) suspended or revoked by the
21 Department of Transportation pursuant to 75 Pa.C.S. § 1374(a)
22 (relating to suspension or revocation of vehicle business
23 registration plates). A certified copy of the decision and
24 order of the Department of Transportation will constitute
25 conclusive evidence.

26 (17) Being a new car dealer whose franchise agreement
27 with a manufacturer or distributor, which gives the subject
28 dealer selling rights for that line-make, has been finally
29 terminated, but who continues to sell new vehicles. A
30 recreational vehicle or manufactured housing dealer, whose

1 franchise was terminated or failed to be renewed by either
2 the manufacturer or the dealer, who owned new vehicles prior
3 to the termination or nonrenewal and sold them subsequent to
4 the termination or nonrenewal is exempt from prosecution
5 under this paragraph. Such dealers shall be authorized to
6 sell as new all new vehicles that remain on their lot after a
7 franchise is terminated or failed to be renewed.

8 (18) Willfully failing to display a license.

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

11 (20) Permitting or allowing another individual or
12 organization not licensed by the board to use that
13 individual's license for the purpose of operating in this
14 Commonwealth in a capacity for which the individual or
15 organization should have held a license.

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

19 (22) Failing to collect a tax or fee due the
20 Commonwealth upon a sale of a vehicle as defined in 75
21 Pa.C.S. § 102 (relating to definitions).

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

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

26 (25) Failing to pay over taxes or fees collected for the
27 Commonwealth at the time and in the manner required by law.

28 (26) Violating any provision of this act.

29 (27) Being an unlicensed salesperson, dealer, vehicle
30 auction, branch lot, manufacturer or any other person or

1 business where a license is required under this act.

2 (28) Any violation of the regulations promulgated by the
3 board.

4 (29) Being a wholesale vehicle auction who permits
5 dealers who are not currently licensed in this Commonwealth
6 or any other state or jurisdiction or a vehicle business
7 registered with the Department of Transportation and issued a
8 Department of Transportation identification number or
9 licensed or registered by any other state or jurisdiction for
10 a similar activity who during the time their licenses or
11 registrations are suspended or revoked by the Commonwealth or
12 any other state to sell, represent or purchase vehicles at an
13 auction.

14 (29.1) Being a wholesale vehicle auction who permits a
15 vehicle business as described under paragraph (29), which is
16 restricted to certain vehicle buys, sales or exchanges as set
17 forth in section [5(f)(2)] 303(f)(2), to buy, sell or
18 exchange vehicles of a type which the vehicle business is not
19 authorized to engage in.

20 (30) Being a dealer which permits salespersons who are
21 not currently licensed in this Commonwealth or any other
22 state or who during the time their licenses are suspended or
23 revoked by the Commonwealth or any other state to sell,
24 represent or purchase vehicles at an auction.

25 (31) Being a public or retail vehicle auction who
26 knowingly and willfully permits any buyer or seller to buy or
27 sell vehicles which results in engaging in the business as
28 dealer without a license or permitting any other person to
29 engage in any activity which would require licensure under
30 this act.

1 (32) Being a dealer which willfully permits an
2 individual or salesperson to buy, sell or exchange a vehicle
3 for his own benefit or profit under the dealer's license.

4 (33) Being a dealer which willfully permits any person
5 who is not a licensed salesperson or owner of the dealership
6 to use the dealer's dealer identification number issued by
7 the Department of Transportation, vehicle dealer's license
8 number or dealer's vehicle registration plates for the
9 purpose of buying, selling or exchanging vehicles.

10 (34) Being a dealer which conducts its business under
11 any name other than the name in which it is registered or at
12 any other location than that authorized by its license.

13 (35) Being a dealer, agent of a dealer or a salesperson
14 who buys, sells or exchanges vehicles with a person who is
15 required to be licensed under this act if the dealer, agent
16 or salesperson knew or should have known that the person is
17 not licensed.

18 (36) Accepting an order of purchase or a contract from a
19 buyer, which offer of purchase or contract is subject to
20 subsequent acceptance by the seller, if such arrangement
21 results in the practice of bushing.

22 (37) Failing to produce business records when an
23 authorized agent of the board reasonably requests the
24 licensee to produce business records.

25 (38) Being a person whose license under this act or
26 authority to engage as a dealer or salesperson in any other
27 state or jurisdiction was suspended or revoked and, while the
28 license or authority was suspended or revoked, was physically
29 present at a wholesale vehicle auction or public or retail
30 vehicle auction during the auctioning of vehicles. A vehicle

1 auction shall not be subject to prosecution for a violation
2 of a person being physically present under this paragraph.

3 (39) Being an out-of-State recreational vehicle dealer
4 who, while buying, selling, titling, registering, financing
5 or exchanging recreational vehicles in this Commonwealth,
6 violates a Pennsylvania law or regulation or a law or
7 regulation of the state or jurisdiction of licensure or the
8 state or jurisdiction of domicile regarding the buying,
9 selling, titling, registering, financing or exchanging of
10 recreational vehicles.

11 (40) Being an out-of-State recreational vehicle dealer
12 who fails to demonstrate, upon direction of or investigation
13 by the board or its agents, that the out-of-State
14 recreational vehicle dealer satisfies the provisions of
15 section 32.1(c) regarding participation in this Commonwealth
16 in a recreational vehicle show, recreational vehicle off-
17 premise sale, recreational vehicle exhibition or recreational
18 vehicle rally.

19 Section [20] 319. Administrative liability of employer,
20 copartnership, association or corporation.

21 In the event of the revocation of the license issued to any
22 member of a partnership or to any officer of an association or
23 corporation, the license issued to a partnership, association or
24 corporation shall be revoked by the board unless, within a time
25 fixed by the board, in the case of a partnership, the connection
26 of the member whose license has been revoked shall be severed
27 and his interest in the partnership and his share in its
28 activities brought to an end, or in the case of an association
29 or corporation, the offending officer shall be discharged and
30 shall have no further participation in its activities.

1 Section [21] 320. Reinstatement.

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

5 (b) Revocation.--Unless ordered to do so by a court, the
6 board shall not reinstate the license of a person that has been
7 revoked and such person shall be required to apply for a license
8 after a period of five years in accordance with section [22] 321
9 if he desires to resume operating as a licensee at any time
10 after such revocation.

11 Section [22] 321. Application for license.

12 (a) Dealer's or vehicle auction's license.--Application for
13 license as a dealer or vehicle auction shall be made in writing
14 to the board, signed by the applicant, setting forth the
15 following:

16 (1) Name of applicant and location of principal place of
17 business to which the license will be issued.

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

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

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

24 (5) If new vehicles are to be sold, the line-make or
25 line-makes to be handled.

26 (6) A statement of the previous history, record and
27 association of the applicant and of each owner, partner,
28 officer and director, which statement shall be sufficient to
29 establish to the satisfaction of the board the reputation in
30 business of the applicant.

1 (7) A statement showing whether the applicant has
2 previously applied for a license and the result of such
3 application and whether the applicant has ever been the
4 holder of either a dealer, vehicle auction or salesperson
5 license which was revoked or suspended.

6 (8) If the applicant is a corporation or partnership, a
7 statement showing whether any of the partners, employees,
8 officers or directors have been refused a dealer's, vehicle
9 auction's or salesperson's license or have been the holder of
10 such a license which was revoked or suspended.

11 (9) A statement by the applicant that he has met all
12 facility requirements as noted herein and as required by
13 regulation.

14 (b) Salesperson's license.--Application for license as a
15 salesperson shall be made in writing to the board, signed by the
16 applicant, setting forth the following:

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

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

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

21 (4) The name and address of the dealer then employing
22 him or into whose employ he is about to enter. If the
23 applicant is to be licensed for a dealer who is licensed in
24 more than one category or at more than one location and the
25 applicant desires to sell for each of the dealer's licensed
26 entities, the name and address of the primary location and of
27 each other entity shall be supplied.

28 (5) The recommendation of his employer or prospective
29 employer certifying that the applicant is honest, trustworthy
30 and of good repute and recommending that a license be

1 granted. In the case of an applicant who is himself a dealer,
2 an officer of a corporation which is a dealer or a member of
3 a partnership which is a dealer, the foregoing recommendation
4 shall be made by another dealer, bank or sales finance
5 company which has personal knowledge concerning the
6 reputation and fitness of the applicant.

7 (6) A statement showing whether the applicant has
8 previously applied for a license and the result of such
9 application and whether the applicant has ever been the
10 holder of a salesperson's license which was revoked or
11 suspended or the subject of disciplinary action by this board
12 or that of any other jurisdiction.

13 (7) The application shall be made upon a form prepared
14 by the board containing such other reasonable information as
15 the board shall require.

16 (c) Application for license other than as a dealer, vehicle
17 auction or salesperson.--Application for license other than as a
18 dealer, vehicle auction or salesperson shall be made in writing
19 to the board accompanied by the required fee. The board may
20 require, in such application or otherwise, information relating
21 to the applicant's background and his financial standing, all of
22 which may be considered by the board in determining the fitness
23 of said applicant to engage in the business for which he desires
24 to be licensed.

25 (d) Manufacturer's or distributor's license.--Application
26 for license as a manufacturer or distributor shall be made in
27 writing to the board, signed by the applicant, setting forth or
28 attaching the following:

29 (1) Name of applicant and location of principal place of
30 business for the license which is the subject of the

1 application and the location of any other place of business
2 within this Commonwealth.

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

5 (3) The line-make or line-makes of new vehicles which
6 are to be manufactured or distributed.

7 (4) A statement showing whether the applicant has
8 previously applied for a license and the result of such
9 application.

10 (e) Change of ownership.--A dealer or vehicle auction shall
11 supply the board with information regarding any change in named
12 owners. The information shall include a statement of the
13 previous history, record and reputation in the business of the
14 new owner. Where the same business name and address is to be
15 retained, any change in owners shall only require the licensee
16 to inform the board of the change in owners but shall not
17 require the licensee to submit to the entire license application
18 process as set forth by this act or corresponding regulations.

19 Section [23] 322. Refusal of license.

20 The board may refuse to issue a license if the applicant has
21 committed any of the acts set forth as grounds for the
22 suspension or revocation of a license or the board finds that
23 the applicant continued to engage in an activity in violation of
24 this act during the suspension or revocation period. The board
25 may also refuse to issue a license when it determines:

26 (1) That the applicant was previously the holder of a
27 license issued under this act, which license was revoked for
28 cause or which license was suspended for cause and the terms
29 of the suspension have not been fulfilled.

30 (2) That the applicant was previously a limited or

1 general partner, stockholder, director or officer of a
2 partnership or corporation whose license issued under the
3 authority of this act was revoked for cause and never
4 reissued or was suspended for cause and the terms of
5 suspension have not been fulfilled.

6 (3) If the applicant is a partnership or corporation,
7 that one or more of the limited or general partners,
8 stockholders, directors or officers of the partnership or
9 corporation was previously the holder of a license issued
10 under the authority of this act which was revoked for cause
11 or was suspended for cause and the terms of the suspension
12 have not been fulfilled, or that by reason of the facts and
13 circumstances touching the organization, control and
14 management of the partnership or corporation business, the
15 policy of such business will be directed, controlled or
16 managed by individuals who, by reason of their conviction of
17 violations of the provisions of this act, would be ineligible
18 for a license and that by licensing such corporation or
19 partnership, the purposes of this act would likely be
20 defeated.

21 (4) That the applicant is a vehicle dealer, vehicle
22 auction or salesperson who, having within five years prior to
23 the application for or issuance of a license or while a
24 current license is in force, pleaded guilty, entered a plea
25 of nolo contendere or has been found guilty in a court of
26 competent jurisdiction in Federal or in this or any other
27 state jurisdiction of forgery, embezzlement, obtaining money
28 under false pretenses, extortion, conspiracy to defraud,
29 bribery, odometer tampering or any other crime involving
30 moral turpitude.

1 Section [24] 323. Change of salesperson's license to indicate
2 new employer.

3 Whenever a licensed salesperson desires to change his
4 employment from one licensed dealer to another, he shall notify
5 the board in writing using the appropriate form, which is
6 completed in its entirety and is accurate, no later than ten
7 days after the date of change, pay the required fee and return
8 the current license if not previously returned. The board shall
9 issue a new license upon receipt of a complete and accurate
10 salesperson's transfer application. In the interim at such time
11 as the change in affiliation of the salesperson occurs, he shall
12 maintain a copy of the notification sent to the board as his
13 temporary license pending receipt of his new current license.
14 This temporary transfer license shall expire at the end of 45
15 days from the date on the transfer application. It shall be the
16 duty of the applicant to notify the board if a new license or
17 other pertinent communication is not received from the board
18 within 30 days of the submission of the transfer application.
19 The new license shall be issued for the remainder of the period
20 covered by the previous license. The fee for the issuance of
21 such changed license shall be determined by regulation.

22 Section [25] 324. Termination of employment or business.

23 (a) Salesperson's license to be surrendered after
24 termination of employment.--Within ten days after termination of
25 employment, the dealer shall surrender that salesperson's
26 license to the board. If the license is not in the dealer's
27 possession, then it will be the responsibility of the
28 salesperson to return the license to the board.

29 (b) Dealer's, branch lot or vehicle auction license to be
30 surrendered after termination of business.--Within ten days

1 after termination of business activities, the dealer, branch lot
2 or vehicle auction shall surrender to the board all of its
3 licenses and its salespersons' licenses issued by the board.

4 Section [26] 325. Exemption from licensure and registration.

5 This act shall not be construed to require licensure and
6 registration in the following cases:

7 (1) Public officers in the conduct of sales of vehicles
8 in the performance of their official duties.

9 (2) Sales finance companies and banks licensed under the
10 provisions of the act of June 28, 1947 (P.L.1110, No.476),
11 known as the Motor Vehicle Sales Finance Act, in the conduct
12 of sales of vehicles which have been repossessed by them.

13 (3) The sale, exchange or purchase by a person in one
14 calendar year of fewer than five vehicles, except
15 manufactured housing or mobile homes, on which sales tax has
16 been paid at the purchase of the vehicle by that person.
17 Where such a vehicle is authorized under Article II of the
18 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
19 Code of 1971, to be transferred from the person who paid the
20 sales tax to another without being subject to sales tax, such
21 as, but not limited to, wife and husband transfers or
22 disbursements from an estate to a beneficiary, the recipient
23 of the vehicle shall be permitted to sell such vehicle
24 without paying sales tax prior to his sale of the vehicle.

25 (4) The sale, exchange or purchase of fewer than five
26 manufactured housing or mobile homes by a person in one
27 calendar year.

28 Section [27] 326. Limitations on establishing or relocating
29 dealers.

30 (a) Additional or relocation of new vehicle dealers.--

1 (1) In the event that a manufacturer seeks to enter into
2 a franchise establishing an additional new vehicle dealer or
3 relocating an existing new vehicle dealer within or into a
4 relevant market area where the same line-make is then
5 represented, the manufacturer shall in writing first notify
6 the board and each new vehicle dealer in such line-make in
7 the relevant market area of the intention to establish an
8 additional dealer or to relocate an existing dealer within or
9 into that market area. Within 20 days after the end of any
10 appeal procedure provided by the manufacturer, any such new
11 vehicle dealer may file with the board a protest to the
12 establishing or relocating of the new vehicle dealer. When
13 such a protest is filed, the board shall inform the
14 manufacturer that a timely protest has been filed, and that
15 the manufacturer shall not establish the proposed new vehicle
16 dealer or relocate the new vehicle dealer until the board has
17 held a hearing, nor thereafter, if the board has determined
18 that there is good cause for not permitting the addition or
19 relocation of such new vehicle dealer.

20 (2) The notice required by this subsection shall include
21 the following information:

22 (i) The location of the proposed additional or
23 relocating new vehicle dealer.

24 (ii) An explanation of the appeal procedure provided
25 by the manufacturer or distributor, if any, to the
26 establishment of the proposed additional new vehicle
27 dealer or relocation of the new vehicle dealer.

28 (iii) An explanation of the existing new vehicle
29 dealer's rights to file a protest with the board to the
30 establishment of the proposed new vehicle dealer or the

1 relocation of the new vehicle dealer.

2 (3) Under this subsection, relocating an existing new
3 vehicle dealer shall include any instance where an existing
4 dealer sells or otherwise transfers all or substantially all
5 of its business to a new owner and the new owner, who has
6 been approved by the manufacturer or distributor to enter
7 into a franchise agreement, seeks to relocate the ongoing,
8 operating dealership franchise from its current licensed
9 address to a site within the relevant market area of the
10 existing dealer which is not within five miles of another
11 licensed new vehicle dealer for the same line-make of vehicle
12 as set forth in subsection (b) (1).

13 (4) (i) Where an automobile, motorcycle or truck
14 manufacturer or distributor seeks to enter into an
15 agreement or franchise establishing an additional vehicle
16 warranty service facility or seeks to relocate an
17 existing vehicle warranty service facility within or into
18 a radius of five miles surrounding where an existing new
19 vehicle dealer vehicle warranty service facility of the
20 same line-make is then represented, except in cases
21 involving a franchised new medium or heavy-duty truck
22 dealer, in which case the affected radius shall be the
23 relevant market area or the area of responsibility as
24 defined in the dealer's franchise, whichever is greater,
25 the automobile, motorcycle or truck manufacturer shall in
26 writing first notify the board and each affected new
27 vehicle dealer vehicle warranty service facility of such
28 line-make of the intention to establish an additional
29 vehicle warranty service facility or to relocate an
30 existing vehicle warranty service facility within or into

1 the affected market areas.

2 (ii) The notice required by subparagraph (i) shall
3 include the following information:

4 (A) The location of the proposed additional or
5 relocating vehicle warranty service facility.

6 (B) An explanation of the appeal procedure
7 provided by the automobile, motorcycle or truck
8 manufacturer or distributor, if any, to the
9 establishment of the proposed additional vehicle
10 warranty service facility or relocation of the
11 vehicle warranty service facility.

12 (C) An explanation of the existing new vehicle
13 dealer's or vehicle warranty service facility's
14 rights to file a protest with the board to the
15 establishment of the proposed vehicle warranty
16 service facility or the relocation of the vehicle
17 warranty service facility.

18 (iii) Within 20 days after the end of any appeal
19 procedure provided by the automobile, motorcycle or truck
20 manufacturer, any such new vehicle warranty dealer
21 vehicle service facility may file with the board a
22 protest to the establishment or relocation of the vehicle
23 warranty service facility.

24 (iv) When such a protest is filed, the board shall
25 inform the automobile, motorcycle or truck manufacturer
26 that a timely protest has been filed and that the
27 automobile, motorcycle or truck manufacturer shall not
28 establish the proposed vehicle warranty service facility
29 or relocate the vehicle warranty service facility until
30 the board has held a hearing nor thereafter if the board

1 has determined that there is good cause for not
2 permitting the addition or relocation of such vehicle
3 warranty service facility.

4 (v) In determining whether good cause exists to
5 allow for the establishment or relocation of a vehicle
6 warranty service facility, the board shall consider the
7 same type of circumstances as established in subsection
8 (c).

9 (b) Nonapplicability of section.--This section does not
10 apply:

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

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

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

25 (4) To manufactured housing or recreational vehicle
26 dealers.

27 (c) Board to consider existing circumstances.--In
28 determining whether good cause has been established for not
29 entering into or relocating an additional new vehicle dealer for
30 the same line-make, the board shall take into consideration the

1 existing circumstances, including, but not limited to:

2 (1) Permanency of the investment of both the existing
3 and proposed new vehicle dealers.

4 (2) Growth or decline in population and new vehicle
5 registrations in the relevant market area.

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

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

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

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

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

22 Section [27.1] 327. Licensing cost.

23 (a) Licensing cost.--Subject to the limitations established
24 under subsection (c), a licensed dealer who has a contract with
25 the Department of Transportation pursuant to 75 Pa.C.S. § 7501
26 (relating to authorization of messenger and agent services) may
27 charge the purchaser of a vehicle a licensing cost permissible
28 under 75 Pa.C.S. Ch. 19 (relating to fees) and the act of
29 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
30 Practices and Consumer Protection Law, and regulations

1 promulgated thereunder, to include any of the following:

2 (1) The actual cost incurred by the dealer for fees
3 associated with titling and registering the vehicle,
4 including messenger fees, notary fees and electronic
5 transaction fees.

6 (2) A documentary preparation charge for:

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

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

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

14 (b) Out-of-State title.--The provisions of subsection (a)
15 shall apply whether or not the purchaser intends to title and
16 register the vehicle outside this Commonwealth.

17 (c) Limitations.--The following limitations shall apply:

18 (1) A dealer which provides electronic transaction
19 services for documents under subsection (a)(2) may impose a
20 maximum charge of \$100 for calendar year 2008 and a maximum
21 charge of \$120 for calendar year 2009.

22 (2) A dealer which does not provide electronic
23 transaction services for document preparation under
24 subsection (a)(2) may impose a maximum charge of \$80 for
25 calendar year 2008 and a maximum charge of \$100 for calendar
26 year 2009.

27 (d) Adjustment.--Beginning in January 2010, and annually
28 thereafter, the licensing cost for documentary preparation shall
29 be adjusted in accordance with the Federal Consumer Price Index
30 for All Urban Consumers (CPI-U) for all items as published by

1 the United States Department of Labor, Bureau of Labor
2 Statistics, for the previous 12-month period on a cumulative
3 basis. Any adjustment which is less than 50¢ shall be rounded
4 down to the next lowest dollar amount and any adjustment which
5 is 50¢ or greater shall be rounded up to the next highest dollar
6 amount.

7 (e) Fees.--Licensing costs under this section shall not be
8 considered fees for purposes of section [30 or 31] 330 or 331.
9 Section [28] 328. Penalties.

10 (a) Criminal penalties for violation of this act.--Whoever
11 shall give any false or forged evidence of any kind to the board
12 or to any member in order to obtain a license, or shall refuse
13 upon request to furnish business records, documents and files
14 relating to practice under this act, or shall otherwise violate
15 the provisions of this act shall be guilty of a summary offense
16 and, upon conviction, shall be ordered to pay a fine of \$1,000.
17 A licensee shall be subject to criminal prosecution under this
18 subsection for violation of any provision of this act.

19 (b) Criminal penalties for unlicensed activity.--Whoever
20 engages in the business of vehicle dealer, manufacturer, factory
21 branch, distributor, distributor branch, auction or broker or
22 engages in the occupation of vehicle salesperson or factory or
23 distributor representative without being licensed and registered
24 as required or exempted from licensure as provided, or shall
25 present or attempt to use as his own the license of another,
26 shall be guilty of a summary offense and, upon conviction, shall
27 be sentenced to pay a fine of \$1,000 or any higher amount equal
28 to double the pecuniary gain derived from the offense. For the
29 purpose of this act the sale of each vehicle in violation of
30 this act constitutes a separate offense.

1 (c) Additional remedy.--In addition to any other civil
2 remedy or criminal penalty provided for in this act, the board
3 by a vote of the majority of the authorized membership of the
4 board as provided by law, or by a vote of the majority of the
5 duly qualified and confirmed membership, may levy a civil
6 penalty of up to \$1,000 on any current licensee who violates any
7 provision of this act or on any person who engages in an
8 activity required to be licensed by this act. The board shall
9 levy this penalty only after affording the accused party the
10 opportunity for a hearing as provided in 2 Pa.C.S. (relating to
11 administrative law and procedure).

12 Section [29] 329. Civil actions for violations.

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

24 Section [30] 330. Fees.

25 (a) General rule.--All fees required under the provisions of
26 this act shall be fixed by the board by regulation and shall be
27 subject to review in accordance with the act of June 25, 1982
28 (P.L.633, No.181), known as the Regulatory Review Act. If the
29 revenues generated by fees, fines and civil penalties imposed in
30 accordance with the provisions of this act are not sufficient to

1 match expenditures over a two-year period, the board shall
2 increase those fees by regulation, subject to review in
3 accordance with the Regulatory Review Act, such that the
4 projected revenues will meet or exceed projected expenditures.

5 (b) Increases by bureau.--If the Bureau of Professional and
6 Occupational Affairs determines that the fees established by the
7 board are inadequate to meet the minimum enforcement efforts
8 required, then the bureau, after consultation with the board,
9 shall increase the fees by regulation, subject to review in
10 accordance with the Regulatory Review Act, such that adequate
11 revenues are raised to meet the required enforcement effort.

12 (c) Existing fees.--All fees fixed pursuant to section 211
13 of the act of July 1, 1978 (P.L.700, No.124), known as the
14 Bureau of Professional and Occupational Affairs Fee Act, shall
15 continue in full force and effect until changed by the board
16 pursuant to subsection (a).

17 Section [31] 331. Disposition of fees and fines.

18 All civil fines and fees and all criminal fines shall be paid
19 into the Special Augmentation Fund established by section 301 of
20 the act of July 1, 1978 (P.L.700, No.124), known as the Bureau
21 of Professional and Occupational Affairs Fee Act.

22 Section [32] 332. Vehicle shows, off-premise sales and
23 exhibitions.

24 (a) Participation.--Any licensed dealer, distributor or
25 manufacturer may participate in public vehicle shows, off-
26 premise sales and exhibitions, provided that a dealer shall
27 participate only in shows, off-premise sales and exhibitions
28 held within the dealer's relevant market area. A dealer shall be
29 permitted to conduct a vehicle show or exhibition at its
30 established place of business.

1 (b) Application of section.--The provisions of this section
2 relating to "relevant market area" shall not apply to vehicle
3 shows held as part of, and in conjunction with, the following:

4 (1) An event operated to benefit a charitable
5 organization or group of organizations approved under section
6 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3,
7 26 U.S.C. § 501(c)(3)).

8 (2) A community or agricultural fair which receives
9 funds from the Pennsylvania Fair Fund.

10 (3) An event pertaining to shows of recreational
11 vehicles, manufactured housing or mobile homes.

12 (c) Out-of-State new vehicle dealers.--A new vehicle dealer,
13 except a recreational vehicle dealer, licensed in another state
14 or jurisdiction may participate with permission of its licensed
15 manufacturer in industrywide public vehicle shows and
16 exhibitions in which a total of 50 or more new vehicle dealers
17 participate as exhibitors. Furthermore, the limitations relating
18 to relevant market area contained in subsection (a) shall not be
19 applicable to industrywide public vehicle shows and exhibitions
20 in which, when open to the public, a total of 50 or more new
21 vehicle dealers participate as exhibitors.

22 (e) Emergency vehicles.--Licensed manufacturers of
23 firefighting or emergency service vehicles shall be authorized
24 to buy, sell or exchange such vehicles to governmental agencies
25 or emergency service providers at vehicle shows, off-premise
26 sales and exhibitions without possessing a dealer's license.

27 (f) Applicability.--This section shall not apply to
28 recreational vehicle dealers.

29 Section 8. (Reserved).

30 Section 9. Section 33 of the act is renumbered and amended

1 to read:

2 Section [33] 333. Off-premise sales, shows, exhibitions or
3 rallies on Sundays.

4 (1) The following shall be permitted to be open on
5 Sundays:

6 (i) Off-premise vehicle sales, shows and
7 exhibitions.

8 (ii) recreational vehicle shows, recreational
9 vehicle off-premise sales, recreational vehicle
10 exhibitions and recreational vehicle rallies.

11 Off-premise vehicle sales, shows and exhibitions shall be
12 permitted to be open on Sundays.

13 (2) Except as provided in [paragraphs (3) and] paragraph
14 (4), normal vehicle business practices shall be allowed at
15 off-premise sales, vehicle shows or exhibitions on Sunday
16 except that no final sales contract may be consummated on a
17 Sunday.

18 (3) Normal vehicle business practices shall be allowed
19 at recreational vehicle shows, recreational vehicle off-
20 premise sales, recreational vehicle exhibitions and
21 recreational vehicle rallies. recreational vehicle dealers
22 are permitted to consummate final sales contracts on Sundays.

23 (4) Manufactured housing dealers are permitted to
24 consummate final sales contracts on Sundays.

25 Section 10. The act is amended by adding a chapter to read:

26 CHAPTER 5

27 RECREATIONAL VEHICLES

28 Section 501. Legislative intent.

29 It is the intent of the General Assembly to protect the
30 public health, safety and welfare of the residents of this

1 Commonwealth by regulating the relationship between recreational
2 vehicle dealers, manufacturers and suppliers, maintaining
3 competition and providing consumer protection and fair trade.
4 Section 502. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Area of sales responsibility." The geographical area,
9 agreed to by the dealer and the manufacturer in the
10 manufacturer/dealer agreement, within which the dealer has the
11 exclusive right to display and sell the manufacturer's new
12 recreational vehicles of a particular line-make to the retail
13 public.

14 "Dealer." A person, firm, corporation or business entity
15 licensed or required to be licensed under this chapter.

16 "Distributor." A person, firm, corporation or business
17 entity that purchases new recreational vehicles for resale to
18 dealers.

19 "Factory campaign." An effort on the part of a warrantor to
20 contact a recreational vehicle owner or dealer in order to
21 address a part or equipment issue.

22 "Family member." A spouse, child, grandchild, parent,
23 sibling, niece or nephew or the spouse of a child, grandchild,
24 sibling, niece or nephew.

25 "Fifth wheel trailer." A vehicle mounted on wheels designed
26 to provide temporary living quarters for recreational, camping
27 or travel use which is a size and weight which does not require
28 a special highway movement permit and is designed to be towed by
29 a motorized vehicle that contains a towing mechanism mounted
30 above or forward of the tow vehicle's rear axle.

1 "Folding camping trailer." A vehicle mounted on wheels and
2 constructed with collapsible side walls that fold for towing by
3 another vehicle and unfold at the campsite to provide temporary
4 living quarters for recreational, camping or travel use.

5 "Line-make." A specific series of recreational vehicles
6 that:

7 (1) Are identified by a common series trade name or
8 trademark.

9 (2) Are targeted to a particular market segment, as
10 determined by the recreational vehicle's decor, features,
11 equipment, size, weight and price range.

12 (3) Have lengths and interior floor plans that
13 distinguish the recreational vehicles from other recreational
14 vehicles with substantially the same decor, equipment,
15 features, price and weight.

16 (4) Belong to a single, distinct classification of
17 recreational vehicle product type having a substantial degree
18 of commonality in the construction of the chassis, frame and
19 body.

20 (5) The manufacturer/dealer agreement authorizes a
21 dealer to sell.

22 "Manufacturer." A person, firm, corporation or business
23 entity that engages in the manufacturing of recreational
24 vehicles.

25 "Manufacturer/dealer agreement." A written agreement or
26 contract entered into between a manufacturer and a dealer that
27 fixes the rights and responsibilities of the parties and under
28 which the dealer sells new recreational vehicles.

29 "Proprietary part." A part manufactured by or for and sold
30 exclusively by a manufacturer.

1 "Supplier." A person, firm, corporation or business entity
2 that engages in the manufacturing of recreational vehicle parts,
3 accessories or components.

4 "Transient customer." A customer who is temporarily
5 traveling through a dealer's area of sales responsibility.

6 "Travel trailer." A vehicle mounted on wheels designed to
7 provide temporary living quarters for recreational, camping or
8 travel use of a size and weight as to not require a special
9 highway movement permit when towed by a motorized vehicle.

10 "Truck camper." A vehicle designed to be placed in the bed
11 of a pickup truck to provide temporary living quarters for
12 recreational, camping or travel use.

13 "Warrantor." A person, firm, corporation or business entity,
14 including a manufacturer or supplier that provides a written
15 warranty to a consumer in connection with a new recreational
16 vehicle or a part, accessory or component of a new recreational
17 vehicle. The term does not include service contracts, mechanical
18 or other insurance or extended warranties sold for separate
19 consideration by a dealer or other person not controlled by a
20 manufacturer.

21 Section 503. Written agreements and designated territories.

22 (a) General rule.--A manufacturer or distributor may not
23 sell a recreational vehicle in this Commonwealth to or through a
24 dealer without having first entered into a manufacturer/dealer
25 agreement with a dealer which has been signed by both parties.

26 (b) Area of sales responsibility.--The manufacturer shall
27 designate the area of sales responsibility exclusively assigned
28 to a dealer in the manufacturer/dealer agreement and may not
29 change the area or contract with another dealer for sale of the
30 same line-make in the designated area for the duration of the

1 agreement.

2 (c) Review.--The area of sales responsibility may be
3 reviewed or changed with the consent of both parties not less
4 than 12 months after the execution of the manufacturer/dealer
5 agreement.

6 (d) New vehicles.--A recreational vehicle dealer may not
7 sell a new recreational vehicle in this Commonwealth without
8 having first entered into a manufacturer/dealer agreement with a
9 manufacturer or distributor which has been signed by both
10 parties.

11 Section 504. Termination, cancellation, nonrenewal and
12 alteration of dealership by manufacturer.

13 (a) General rule.--A manufacturer or distributor, directly
14 or through an authorized officer, agent or employee, may
15 terminate, cancel or fail to renew a manufacturer/dealer
16 agreement with good cause.

17 (1) If the manufacturer or distributor terminates,
18 cancels or fails to renew the manufacturer/dealer agreement
19 without good cause, the manufacturer or distributor must
20 comply with section 506.

21 (2) If the manufacturer or distributor terminates,
22 cancels or fails to renew the manufacturer/dealer agreement
23 with good cause, the provisions of section 506 shall not
24 apply.

25 (b) Burden of proof.--The manufacturer or distributor has
26 the burden of showing good cause for terminating, canceling or
27 failing to renew a manufacturer/dealer agreement with a dealer.
28 For purposes of determining whether there is good cause for the
29 proposed action, any of the following factors may be considered:

30 (1) The extent of the affected dealer's penetration in

1 the area of sales responsibility.

2 (2) The nature and extent of the dealer's investment in
3 the dealer's business.

4 (3) The adequacy of the dealer's service facilities,
5 equipment, parts, supplies and personnel.

6 (4) The effect of the proposed action on the community.

7 (5) The extent and quality of the dealer's service under
8 recreational vehicle warranties.

9 (6) The dealer's failure to follow agreed-upon
10 procedures or standards related to the overall operation of
11 the dealership.

12 (7) The dealer's performance under the terms of its
13 manufacturer/dealer agreement.

14 (c) Written notice required.--Except as otherwise provided
15 in this section, a manufacturer or distributor shall provide a
16 dealer with at least 90 days' prior written notice of
17 termination, cancellation or nonrenewal of the
18 manufacturer/dealer agreement in the event the dealer is being
19 terminated for good cause. The following shall apply:

20 (1) The notice shall state all reasons for the proposed
21 termination, cancellation or nonrenewal and shall state that,
22 within 30 days following receipt of the notice, the dealer
23 shall provide to the manufacturer or distributor written
24 notice of intent to cure all claimed deficiencies. The dealer
25 shall have 90 days following receipt of the original notice
26 to rectify the deficiencies.

27 (2) If the deficiencies are rectified within 90 days,
28 the manufacturer's or distributor's notice shall be voided.
29 If the dealer fails to provide the notice of intent to cure
30 the deficiencies in the prescribed time period or fails to

1 cure the deficiencies in the time period provided, the
2 termination, cancellation or nonrenewal shall take effect 30
3 days after the dealer's receipt of the original notice. If
4 the dealer has new and untitled inventory on hand, it may be
5 sold under section 506.

6 (d) Time period of notice.--The notice period may be reduced
7 to 30 days if the manufacturer's or distributor's grounds for
8 termination, cancellation or nonrenewal are due to any of the
9 following good cause factors:

10 (1) A dealer or one of its owners has been convicted of
11 or has entered a plea of nolo contendere to a felony.

12 (2) The abandonment or closing of the business
13 operations of the dealer for 10 consecutive business days
14 unless the closing is due to an act of God, strike, labor
15 difficulty or other cause over which the dealer has no
16 control.

17 (3) A significant misrepresentation by the dealer
18 materially affecting the business relationship.

19 (4) A suspension or revocation of the dealer's license
20 or refusal to renew the dealer's license by the department.

21 (5) A material violation of this chapter which is not
22 resolved within 30 days after the written notice by the
23 manufacturer.

24 (e) Nonapplicability of notice.--The notice provisions of
25 subsection (c) do not apply if the reason for termination,
26 cancellation or nonrenewal is the dealer's insolvency, the
27 occurrence of an assignment for the benefit of creditors or
28 bankruptcy.

29 Section 505. Termination, cancellation, nonrenewal and
30 alteration of dealership by dealer.

1 (a) General rule.--A dealer may terminate or cancel its
2 manufacturer/dealer agreement with a manufacturer or distributor
3 with or without good cause by giving 30 days' written notice.

4 (1) If the termination or cancellation is for good
5 cause, the notice shall state all reasons for the proposed
6 termination or cancellation and shall state that if, within
7 30 days following receipt of the notice, the manufacturer or
8 distributor provides to the dealer a written notice of intent
9 to cure all claimed deficiencies, the manufacturer or
10 distributor will then have 90 days following receipt of the
11 original notice to rectify the deficiencies.

12 (2) If the deficiencies are rectified within 90 days,
13 the dealer's notice shall be voided. If the manufacturer or
14 distributor fails to provide the notice of intent to cure the
15 deficiencies or fails to cure the deficiencies in the time
16 period prescribed in the original notice, the termination or
17 cancellation shall take effect as provided in the original
18 notice.

19 (b) Good cause shown.--If the dealer terminates, cancels or
20 fails to renew the manufacturer/dealer agreement without good
21 cause, the provisions of section 506 shall not apply. If the
22 dealer terminates, cancels or fails to renew the
23 manufacturer/dealer agreement with good cause, the provisions of
24 section 506 shall apply. The dealer has the burden of showing
25 good cause for the proposed termination, cancellation or
26 nonrenewal action by a dealer due to any of the following good
27 cause factors:

28 (1) A manufacturer being convicted of or entering a plea
29 of nolo contendere to a felony.

30 (2) The business operations of the manufacturer have

1 been abandoned or closed for 10 consecutive business days,
2 unless the closing is due to an act of God, strike, labor
3 difficulty or other cause over which the manufacturer has no
4 control.

5 (3) A significant misrepresentation by the manufacturer
6 materially affecting the business relationship.

7 (4) A material violation of this chapter which is not
8 cured within 30 days after written notice by the dealer.

9 (5) A declaration by the manufacturer of bankruptcy,
10 insolvency or the occurrence of an assignment for the benefit
11 of creditors or bankruptcy.

12 Section 506. Repurchase of inventory.

13 (a) General rule.--If the manufacturer/dealer agreement is
14 terminated, canceled or not renewed by the manufacturer or
15 distributor without good cause, or if the dealer terminates or
16 cancels the manufacturer/dealer agreement for good cause as
17 defined in section 505(a) (1) and the manufacturer fails to
18 provide notice or cure the claimed deficiencies as provided in
19 section 505(a) (2), the manufacturer shall, at the dealer's
20 option and within 45 days after termination, cancellation or
21 nonrenewal, repurchase:

22 (1) All new, untitled recreational vehicles that were
23 acquired from the manufacturer or distributor within 12
24 months before the effective date of the notice of
25 termination, cancellation or nonrenewal that have not been
26 used, except for demonstration purposes, and that have not
27 been altered or damaged, at 100% of the net invoice cost,
28 including transportation, less applicable rebates and
29 discounts to the dealer.

30 (2) In the event any of the vehicles repurchased under

1 this section are damaged, but do not trigger a consumer
2 disclosure requirement, the amount due the dealer shall be
3 reduced by the cost to repair the vehicle. Damage prior to
4 delivery to the dealer that is disclosed at the time of
5 delivery will not disqualify repurchase under this
6 subsection.

7 (3) All undamaged accessories and proprietary parts sold
8 to the dealer for resale within the 12 months prior to
9 termination, cancellation or nonrenewal, if accompanied by
10 the original invoice, at 105% of the original net price paid
11 to the manufacturer or distributor to compensate the dealer
12 for handling, packing and shipping the parts.

13 (4) Properly functioning diagnostic equipment, special
14 tools, current signage or other equipment and machinery which
15 was purchased by the dealer upon the manufacturer's or
16 distributor's request within five years prior to the
17 termination, cancellation or nonrenewal and which can no
18 longer be used in the normal course of the dealer's ongoing
19 business at 100% of the dealer's net cost plus freight.

20 (b) Sale of remaining inventory after termination.--

21 (1) A dealer is not prohibited from selling the
22 remaining in-stock inventory of a particular line-make after
23 a manufacturer/dealer agreement has been terminated or not
24 renewed under section 504.

25 (2) If recreational vehicles of a line-make subject to
26 the terminated agreement are not repurchased or required to
27 be repurchased by the manufacturer or distributor, the dealer
28 may continue to sell the recreational vehicles that are
29 subject to the terminated manufacturer/dealer agreement and
30 are currently in stock until those recreational vehicles are

1 no longer in the dealer's inventory.

2 Section 507. Transfer of dealership and family succession.

3 (a) General rule.--

4 (1) If a dealer desires to make a change in ownership by
5 the sale of the business assets, stock transfer or otherwise,
6 the dealer shall give the manufacturer or distributor written
7 notice at least 15 business days before the closing,
8 including all supporting documentation as may be reasonably
9 required by the manufacturer or distributor to determine if
10 an objection to the sale may be made. In the absence of a
11 breach by the selling dealer of its manufacturer/dealer
12 agreement or this chapter, the manufacturer or distributor
13 shall not object to the proposed change in ownership unless
14 the prospective transferee:

15 (i) has previously been terminated by the
16 manufacturer for breach of its dealer agreement;

17 (ii) has been convicted of a felony or a crime of
18 fraud, deceit or moral turpitude;

19 (iii) lacks a license required by law;

20 (iv) does not have an active line of credit
21 sufficient to purchase a manufacturer's product; or

22 (v) has undergone in the last 10 years bankruptcy,
23 insolvency, a general assignment for the benefit of
24 creditors or the appointment of a receiver, trustee or
25 conservator to take possession of the transferee's
26 business or property.

27 (2) If the manufacturer or distributor objects to a
28 proposed change of ownership, the manufacturer or distributor
29 shall give written notice of its reasons to the dealer within
30 10 business days after receipt of the dealer's notification

1 and complete documentation. The manufacturer or distributor
2 has the burden of proof with regard to its objection. If the
3 manufacturer or distributor does not give timely notice of
4 its objection, the change or sale shall be deemed approved.

5 (3) It is unlawful for a manufacturer or distributor to
6 fail to provide a dealer an opportunity to designate, in
7 writing, a family member as a successor to the dealership in
8 the event of the death, incapacity or retirement of the
9 dealer. It is unlawful to prevent or refuse to honor the
10 succession to a dealership by a family member of the
11 deceased, incapacitated or retired dealer unless the
12 manufacturer or distributor has provided to the dealer
13 written notice of its objections within 10 days after receipt
14 of the dealer's modification of the dealer's succession plan.
15 In the absence of a breach of the dealer agreement, the
16 manufacturer may object to the succession for the following
17 reasons only:

18 (i) conviction of the successor of a felony or a
19 crime of fraud, deceit or moral turpitude;

20 (ii) bankruptcy or insolvency of the successor
21 during the past 10 years;

22 (iii) prior termination by the manufacturer of the
23 successor for breach of a dealer agreement;

24 (iv) the successor does not have an active line of
25 credit sufficient to purchase the manufacturer's product;

26 or

27 (v) the successor lacks a license required by law.

28 (b) Burden of proof.--The manufacturer or distributor has
29 the burden of proof regarding the manufacturer's or
30 distributor's objection. A family member may not succeed to a

1 dealership if the succession involves, without the
2 manufacturer's or distributor's consent, a relocation of the
3 business or an alteration of the terms and conditions of the
4 manufacturer/dealer agreement.

5 Section 508. Warranty obligations.

6 (a) General rule.--Each warrantor shall:

7 (1) Specify in writing to each of its dealer
8 obligations, if any, for preparation, delivery and warranty
9 service on its products.

10 (2) Compensate the dealer for warranty service required
11 of the dealer by the warrantor.

12 (3) Provide to the dealer the schedule of compensation
13 to be paid and the time allowances for the performance of
14 work and service. The schedule of compensation must include
15 reasonable compensation for diagnostic work, as well as
16 warranty labor.

17 (b) Time allowances and compensation.--Time allowances for
18 the diagnosis and performance of warranty labor must be
19 reasonable for the work to be performed. In the determination of
20 what constitutes reasonable compensation under this section, the
21 principal factors to be given consideration shall be the actual
22 wage rates being paid by the dealer and the actual retail labor
23 rate being charged by the dealers in the community in which the
24 dealer is doing business. The compensation of a dealer for
25 warranty labor may not be less than the lowest retail labor
26 rates actually charged by the dealer for similar nonwarranty
27 labor as long as the rates are reasonable.

28 (c) Reimbursement.--The warrantor shall reimburse the dealer
29 for warranty parts at actual wholesale cost plus a minimum 30%
30 handling charge and the cost, if any, of freight to return

1 warranty parts to the warrantor.

2 (d) Audits.--Warranty audits of dealer records may be
3 conducted by the warrantor on a reasonable basis, and dealer
4 claims for warranty compensation may not be denied except for
5 cause, such as performance of nonwarranty repairs, material
6 noncompliance with the warrantor's published policies and
7 procedures, lack of material documentation, fraud or
8 misrepresentation.

9 (e) Warranty claims.--The dealer shall submit warranty
10 claims within 45 days after completing work.

11 (f) Inability to perform repairs.--The dealer shall
12 immediately notify the warrantor verbally or in writing if the
13 dealer is unable to perform warranty repairs within 10 days of
14 receipt of verbal or written complaints from a consumer.

15 (g) Disapproval of warranty claims.--The warrantor shall
16 disapprove warranty claims in writing within 45 days after the
17 date of submission by the dealer in the manner and form
18 prescribed by the warrantor. Claims not specifically disapproved
19 in writing within 45 days shall be construed to be approved and
20 must be paid within 60 days of submission.

21 (h) Violation.--It is a violation of this chapter for a
22 warrantor to:

23 (1) Fail to perform any of its warranty obligations with
24 respect to its warranted products.

25 (2) Fail to include, in written notices of factory
26 campaigns to recreational vehicle owners and dealers, the
27 expected date by which necessary parts and equipment,
28 including tires and chassis or chassis parts, will be
29 available to dealers to perform the campaign work. The
30 warrantor may ship parts to the dealer to effect the campaign

1 work, and, if the parts are in excess of the dealer's
2 requirements, the dealer may return unused parts to the
3 warrantor for credit after completion of the campaign.

4 (3) Fail to compensate its dealers for authorized
5 repairs effected by the dealer on merchandise damaged in
6 manufacture or transit to the dealer, if the carrier is
7 designated by the warrantor, factory branch, distributor or
8 distributor branch.

9 (4) Fail to compensate its dealers in accordance with
10 the schedule of compensation provided to the dealer under
11 this section if repairs are performed in a timely and
12 competent manner.

13 (5) Intentionally misrepresent in any way to purchasers
14 of recreational vehicles that warranties with respect to the
15 manufacture, performance or design of the vehicle are made by
16 the dealer as warrantor or cowarrantor.

17 (6) Require the dealer to make warranties to customers
18 in any manner related to the manufacture of the recreational
19 vehicle.

20 (i) Violations.--It is a violation of this chapter for a
21 dealer to:

22 (1) Fail to perform predelivery inspection functions, as
23 specified by the warrantor, in a competent and timely manner.

24 (2) Fail to perform warranty service work authorized by
25 the warrantor in a competent and reasonably timely manner on
26 a transient customer's recreational vehicle of a line make
27 sold or serviced by that dealer.

28 (3) Fail to accurately document the time spent
29 completing each repair, the total number of repair attempts
30 conducted on a single unit and the number of repair attempts

1 for the same repair conducted on a single vehicle.

2 (4) Fail to notify the warrantor within 10 days of a
3 second repair attempt which impairs the use, value or safety
4 of the vehicle.

5 (5) Fail to maintain written records, including a
6 consumer's signature, regarding the amount of time a unit is
7 stored for the consumer's convenience during a repair.

8 (6) Make fraudulent warranty claims or misrepresent the
9 terms of a warranty.

10 Section 509. Indemnification.

11 (a) General rule.--Notwithstanding the terms of a
12 manufacturer/dealer agreement, it is a violation of this chapter
13 for:

14 (1) A warrantor to fail to indemnify and hold harmless
15 its new recreational vehicle dealer against losses or damages
16 to the extent that the losses or damages are caused by the
17 negligence or willful misconduct of the warrantor.

18 (2) A new recreational vehicle dealer to be denied
19 indemnification for failing to discover, disclose or remedy a
20 defect in the design or manufacturing of a new recreational
21 vehicle or new recreational trailer.

22 (3) A new recreational vehicle dealer to fail to
23 indemnify and hold harmless its warrantor against losses or
24 damages to the extent that the losses or damages are caused
25 by the negligence or willful misconduct of the new
26 recreational vehicle dealer.

27 (b) Denial of indemnification.--A new recreational vehicle
28 dealer may be denied indemnification if the new recreational
29 vehicle dealer fails to remedy a known and announced defect in
30 accordance with the written instructions of a warrantor for whom

1 the new recreational vehicle dealer is obligated to perform
2 warranty service.

3 (c) Pending lawsuits.--

4 (1) A new recreational vehicle dealer shall provide to a
5 warrantor a copy of any pending lawsuit in which allegations
6 are made that are covered by the provisions of this section
7 within 10 days after receiving the suit. This subsection
8 shall continue to apply even after the new recreational
9 vehicle is titled.

10 (2) A warrantor shall provide to a new recreational
11 vehicle dealer a copy of any pending law suit or similar
12 proceeding in which allegations are made that come within the
13 provisions of this subsection within 10 days after receiving
14 the suit. This paragraph shall continue to apply even after
15 the new recreational vehicle is titled.

16 Section 510. Inspection and rejection by dealer.

17 (a) General rule.--Whenever a new recreational vehicle is
18 damaged prior to transit to the dealer or is damaged in transit
19 to the dealer when the carrier or means of transportation has
20 been selected by the manufacturer or distributor, the dealer
21 shall notify the manufacturer or distributor of the damage
22 within the time frame specified in the manufacturer/dealer
23 agreement and:

24 (1) request from the manufacturer or distributor
25 authorization to replace the components, parts and
26 accessories damaged or otherwise correct the damage; or

27 (2) reject the vehicle within the time frame set forth
28 in subsection (d).

29 (b) Refusal or failure to repair.--If the manufacturer or
30 distributor refuses or fails to authorize repair of the damage

1 within 10 days after receipt of notification or if the dealer
2 rejects the recreational vehicle because of damage, ownership of
3 the new RV shall revert to the manufacturer or distributor.

4 (c) Obligations.--The dealer shall exercise due care in
5 custody of the damaged recreational vehicle, but the dealer
6 shall have no other obligations, financial or otherwise, with
7 respect to that recreational vehicle.

8 (d) Time frame.--The time frame for inspection and rejection
9 by the dealer must be part of the manufacturer/dealer agreement
10 and may not be less than two business days after the physical
11 delivery of the recreational vehicle.

12 (e) Unreasonable mileage.--A recreational vehicle that has,
13 at the time of delivery to the dealer, an unreasonable amount of
14 miles on its odometer, as determined by the dealer, may be
15 subject to rejection by the dealer and reversion of the vehicle
16 to the manufacturer or distributor. In no instance shall a
17 dealer deem an amount less than the distance between the dealer
18 and the manufacturer's factory or a distributor's point of
19 distribution, plus 100 miles, as unreasonable.

20 (f) Notice to dealer.--Each manufacturer or distributor of
21 new recreational vehicles sold or transferred to a new
22 recreational vehicle dealer shall notify the new recreational
23 vehicle dealer in writing prior to delivery of the recreational
24 vehicle of any material damage to the recreational vehicle which
25 is known to the manufacturer or distributor which was sustained
26 or incurred by the vehicle at any time after the manufacturing
27 process is complete but prior to delivery of the recreational
28 vehicle to the dealer. A dealer may reject the delivery of a
29 nonconforming recreational vehicle under the provisions of 13
30 Pa.C.S. (relating to commercial code) and the following shall

1 apply:

2 (1) When selling a new recreational vehicle, each new
3 recreational vehicle dealer shall notify the purchaser in
4 writing at the time of sale of any material damage sustained
5 or incurred by the recreational vehicle at any time after the
6 manufacturing process is complete which is disclosed by the
7 manufacturer to the new recreational vehicle dealer.

8 (2) Nothing in this section shall be construed to
9 diminish any obligation to provide notice to the purchaser of
10 a new recreational vehicle which obligation is imposed by any
11 other provision of law or by any judicial decision,
12 including, but not limited to, the act of December 17, 1968
13 (P.L.1224, No.387), known as the Unfair Trade Practices and
14 Consumer Protection Law.

15 Section 511. Coercion of dealer prohibited.

16 (a) General rule.--A manufacturer or distributor may not
17 coerce or attempt to coerce a dealer to:

18 (1) purchase a product that the dealer did not order;

19 (2) enter into an agreement with the manufacturer or
20 distributor; or

21 (3) enter into an agreement that requires the dealer to
22 submit its disputes to binding arbitration or otherwise waive
23 rights or responsibilities provided under this chapter.

24 (b) Definition.--As used in this section, the term "coerce"
25 includes, but is not limited to, threatening to terminate,
26 cancel or not renew a manufacturer/dealer agreement without good
27 cause or threatening to withhold product lines the dealer is
28 entitled to purchase under the manufacturer/dealer agreement or
29 delay product delivery as an inducement to amending the
30 manufacturer/dealer agreement.

1 Section 512. Mediation.

2 (a) General rule.--A dealer, manufacturer or warrantor
3 injured by another party's violation of this chapter may bring a
4 civil action in circuit court to recover actual damages. The
5 court shall award attorney fees and costs to the prevailing
6 party in an action. Venue for a civil action authorized by this
7 section shall be in a county in this Commonwealth in which the
8 dealer's business is located. In an action involving more than
9 one dealer, venue may be in a county in this Commonwealth in
10 which a dealer that is party to the action has a business
11 location.

12 (b) Written demand for mediation.--Prior to bringing suit
13 under this section, the party bringing suit for an alleged
14 violation shall serve a written demand for mediation upon the
15 offending party. The following shall apply:

16 (1) The demand for mediation shall be served upon the
17 other party via certified mail at the address stated within
18 the manufacturer/dealer agreement between the parties.

19 (2) The demand for mediation shall contain a brief
20 statement of the dispute and the relief sought by the party
21 filing the demand.

22 (3) Within 20 days after the date a demand for mediation
23 is served, the parties shall mutually select an independent
24 certified mediator and meet with that mediator for the
25 purpose of attempting to resolve the dispute. The meeting
26 place shall be in this Commonwealth in a location selected by
27 the mediator. The mediator may extend the date of the meeting
28 for good cause shown by either party or upon stipulation of
29 both parties.

30 (4) The service of a demand for mediation under this

1 section shall toll the time for the filing of a complaint,
2 petition, protest or other action under this chapter until
3 representatives of both parties have met with a mutually
4 selected mediator for the purpose of attempting to resolve
5 the dispute. If a complaint, petition, protest or other
6 action is filed before that meeting, the court shall enter an
7 order suspending the proceeding or action until the mediation
8 meeting has occurred and may, upon written stipulation of all
9 parties to the proceeding or action that they wish to
10 continue to mediate under this section, enter an order
11 suspending the proceeding or action for as long a period as
12 the court considers appropriate.

13 (5) The parties to the mediation shall bear their own
14 costs for attorney fees and divide equally the cost of the
15 mediator.

16 (c) Injunction.--In addition to the remedies provided in
17 this section and notwithstanding the existence of any additional
18 remedy at law, a manufacturer, warrantor or a dealer is
19 authorized to make application to a circuit court for the grant,
20 upon a hearing and for cause shown, of a temporary or permanent
21 injunction, or both, restraining a person from acting as a
22 dealer without being properly licensed, from violating or
23 continuing to violate any of the provisions of this chapter or
24 from failing or refusing to comply with the requirements of this
25 chapter. The injunction shall be issued without bond. A single
26 act in violation of the provisions of this chapter shall be
27 sufficient to authorize the issuance of an injunction.

28 Section 513. Severability.

29 The provisions of this chapter are severable. If any
30 provision of this chapter or its application to any person or

1 circumstance is held invalid, the invalidity shall not affect
2 other provisions or applications of this chapter which can be
3 given effect without the invalid provision or application.

4 Section 11. The act is amended by adding a chapter heading
5 to read:

6 CHAPTER 7

7 MISCELLANEOUS PROVISIONS

8 Section 12. Sections 34, 35, 36 and 37 of the act are
9 renumbered to read:

10 Section [34] 701. Savings provision.

11 This act shall not be deemed to repeal, suspend, modify or
12 revoke any of the provisions of 75 Pa.C.S. (relating to
13 vehicles) or of the act of June 28, 1947 (P.L.1110, No.476),
14 known as the Motor Vehicle Sales Finance Act.

15 Section [35] 702. Repeals.

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

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

21 Section [36] 703. Expiration of terms of board members.

22 Persons who are members of the State Board of Motor Vehicle
23 Manufacturers, Dealers and Salespersons on the effective date of
24 this act shall serve on the board created under this act until
25 their current three-year terms expire or until their successors
26 are duly appointed and qualified, but no longer than six months
27 after the expiration of their terms.

28 Section [37] 704. Existing rules and regulations.

29 Each rule and regulation of the board not inconsistent with
30 this act shall remain in effect after such date until repealed

1 or amended by the board.

2 Section 13. The addition of Chapter 5 of the act shall apply
3 to recreational vehicle manufacturer/dealer agreements entered
4 into or renewed on or after the effective date of this act.

5 Section 14. This act shall take effect in 365 days.