

No. 1

AN ACT

HB 216

Amending the act of November 30, 1965 (P.L.847), entitled "An act relating to and regulating the business of banking and the exercise by corporations of fiduciary powers; affecting persons engaged in the business of banking and corporations exercising fiduciary powers and affiliates of such persons; affecting the shareholders of such persons and the directors, trustees, officers, attorneys and employes of such persons and of the affiliates of such persons; affecting national banks located in the Commonwealth; affecting persons dealing with persons engaged in the business of banking, corporations exercising fiduciary powers and national banks; conferring powers and imposing duties on the Banking Board, on certain departments and officers of the Commonwealth and on courts, prothonotaries, clerks and recorders of deeds; providing penalties; and repealing certain acts and parts of acts," further providing for cumulative voting and rights of certain shareholders.

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

Section 1. Subsection (b) of section 1213, act of November 30, 1965 (P.L.847), known as the "Banking Code of 1965" is amended to read:
Section 1213. Election of Directors; Cumulative Voting

* * *

(b) In each election of directors, *except as otherwise provided in the articles*, every shareholder entitled to vote shall have the right, in person or by proxy, to [multiply the number of votes to which he may be entitled by the total number of directors to be elected in the same election by the holders of the class or classes of shares of which his shares are a part, and he may cast the whole number of such votes for one candidate or he may distribute them among any two or more candidates] *one vote for every share standing in his name on the books of the institution and unless the articles so provide, a shareholder may not cumulate his votes*. The candidates receiving the highest number of votes from each class or group of classes entitled to elect directors separately, up to the number of directors to be elected in the same election by such class or group of classes, shall be elected.

Section 2. The act is amended by adding a section to read:
Section 1509. Elimination of Cumulative Voting; Rights of Objecting Shareholders

If an amendment of the articles of incorporation shall eliminate cumulative voting for directors, a shareholder who shall object to such amendment shall be entitled to the rights and remedies of a dissenting shareholder provided under, and subject to compliance with, the provisions of section 1222 of this act.

July 23, 1971

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I return herewith without my approval, House Bill No. 216, Printer's No. 1484, entitled "An Act amending the act of November 30, 1965 (P.L.847), entitled 'An act relating to and regulating the business of banking and the exercise by corporations of fiduciary powers; affecting persons engaged in the business of banking and corporations exercising fiduciary powers and affiliates of such persons; affecting the shareholders of such persons and the directors, trustees, officers, attorneys and employes of such persons and of the affiliates of such persons; affecting national banks located in the Commonwealth; affecting persons dealing with persons engaged in the business of banking, corporations exercising fiduciary powers and national banks; conferring powers and imposing duties on the Banking Board, on certain departments and officers of the Commonwealth and on courts, prothonotaries, clerks and recorders of deeds; providing penalties; and repealing certain acts and parts of acts,' further providing for cumulative voting and rights of certain shareholders."

This bill amends section 1213 (b) of the aforesaid act of November 30, 1965 which is known as the "Banking Code of 1965" by removing the requirement of cumulative voting for directors which is now contained in that section, 7 P.S. §1213 (b).

The bill permits cumulative voting for directors only if provided for in the Articles of Incorporation and provides for dissenters' rights in those cases where cumulative voting is eliminated by an amendment to the articles following action of shareholders.

Cumulative voting for directors is a method of voting by which minority shareholders may obtain representation on the boards of directors.

Prior to 1966, the policy in favor of cumulative voting of directors in the Commonwealth was so strong that it was mandated for all corporations, including banking corporations, by the Constitution of Pennsylvania.

Since then the Constitution was amended deleting the mandate for cumulative voting. In response to that constitutional change the Business Corporation Law has been amended to provide that a corporation shall have cumulative voting unless otherwise provided in its articles. 15 P.S. §1505. Rather than following the format of the Business Corporation Law this bill automatically takes away the right of cumulative voting of directors for those banking corporations which have no specific requirement for cumulative voting in their Articles of Incorporation.

This bill, if made law, would differentiate between those banks which will no longer have cumulative voting and those banks which will retain cumulative voting on the mere happenstance of whether or not the attorney forming the bank added surplus language to the articles

concerning cumulative voting, which language was unnecessary under existing law.

Therefore, the bill makes an unwarranted distinction as to which banks shall continue to have cumulative voting of directors. I believe such a policy to be undesirable, especially since it protects important minority shareholder rights of representation.

For these reasons I have not approved this bill.

MILTON J. SHAPP

No. 2

AN ACT

SB 934

Amending the act of July 8, 1968 (Act No. 150), entitled "A supplement to the act of March 10, 1949 (P.L.30), entitled 'An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto,' providing for the establishment of administrative units comprised of certain school districts," providing for reconsideration of plans in certain cases and further providing for obligations of former school districts, and validating certain obligations incurred by them after the effective dates of reorganizations.

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

Section 1. The title, act of July 8, 1968 (Act No. 150), entitled "A supplement to the act of March 10, 1949 (P.L.30), entitled 'An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto,' providing for the establishment of administrative units comprised of certain school districts," is amended to read:

A SUPPLEMENT

To the act of March 10, 1949 (P.L.30), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," providing for the establishment of administrative units comprised of certain school districts, *and for reconsideration of plans in certain cases.*

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

Section 3.1. Reconsideration of Certain Plans.—*When any school district has not been finally established under section 296 of the act to which this is a supplement or placed in an administrative unit under this act by January 1, 1971, the board of school directors of the intermediate unit of which such district is a part shall, within sixty (60) days of the effective date of this amending act, reconsider any theretofore proposed plan for such establishment or placement of any such proposed district if, in the plan to be reconsidered for the proposed district, such district will contain a pupil population of two thousand (2,000) or more which figure shall include nonpublic school children in the district. Appeals from the decision of the board of school directors of the intermediate unit after such reconsideration, shall be to the court of common pleas of the county in which the school district is located and shall be perfected within thirty (30) days of such decision: Provided, however, That if the majority of any presently constituted interim*

operating committee or school boards where the interim operating committee has not been elected shall elect not to request reconsideration, then in that event the said board of school directors of the intermediate unit shall not reconsider the said theretofore proposed plan.

Section 3. Section 9 of the act is amended to read:

Section 9. Obligations of Former School Districts.—All operating obligations of any component former school district contracted for current operating expenses after June 30, 1966, shall continue to be an obligation of the taxable property within such former component school district. In levying and assessing taxes for the first school year of operation, the interim operating committee, and in levying and assessing such taxes for each subsequent school year, the board of school directors of the newly established school district, shall levy and assess, upon the taxable property within such component former school district, a tax in addition to all other school district taxes, in an amount sufficient to discharge the obligation for operating expenses—probably in a period of ten years. *All other obligations or commitments of any component former school district shall become the obligation or commitment of the newly established school district as if the obligation or commitment were incurred by it.*

Where any lease with a municipal authority has been executed on or before October 1, 1971 on behalf of any component school district which on the date of such execution has not been included in an established and organized new district under the act to which this is a supplement, such lease having been executed by the officers of such component district as of June 30, 1971 pursuant to authorization by the board of school directors of such district prior to such date, the obligations set forth in such lease are hereby validated and confirmed as the obligations of the applicable newly established school district as of the effective date of the reorganization, as if said lease had been executed by it notwithstanding the prior occurrence of a reorganization.

Section 4. This act shall take effect immediately.

September 10, 1971

To the Honorable, the Senate
of the Commonwealth of Pennsylvania

I return herewith, without my approval, Senate Bill No. 934, Printer's No. 1190, entitled, "An act amending the act of July 8, 1968 (Act No. 150), entitled 'A supplement to the act of March 10, 1949 (P.L.30), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," providing for the establishment of administrative units comprised of certain school districts,' providing for reconsideration of plans in certain cases and further providing for obligations of former school districts, and validating certain obligations incurred by them after the effective dates of reorganizations."

It is with genuine regret that I veto Senate Bill No. 934, Printer's No. 1190.

The bill, as introduced, had a commendable purpose—to enable the Delaware County Community College to float a bond issue to finance the construction of their new campus.

Had the bill come to me in its original form, I would have signed it without hesitation, because I believe in the vigorous expansion of a community college system accessible to all Pennsylvanians.

Unhappily for the community college, certain politicians, caring less about education than about personal political advantage, inserted in the bill a wholly extraneous provision for the review of all school mergers which had not been effected by January 1, 1971—first by the intermediate unit board of directors, then by the local court of common pleas.

The amendment in question affects 101 school districts in eight (8) counties with a 1970-71 weighted average daily membership of 165,000. The vast majority of these districts have reorganized, merged their boards, set tax rates for 1971-72, begun to collect taxes, hired new teachers, and have embarked on the 1971-72 school year. In these districts, Senate Bill No. 934, as amended, would create confusion and uncertainty, and postpone by perhaps as long as two years the ultimate settlement of these questions. I cannot in good conscience sign a bill which would promote this kind of chaos.

I am by no means convinced that the results of school reorganization have been uniformly good. In particular, I deplore the trend toward larger and more impersonal schools. But Senate Bill No. 934, as amended, is hardly a thoughtful solution to this problem.

I am not unsympathetic to the problems that some school districts are experiencing because of reorganization. In particular, I am aware that reorganization has been especially difficult in Delaware County. However, the amended version of Senate Bill No. 934 is more than just a response to the difficulties of Delaware County. As I have indicated, it is a wide-ranging bill affecting 101 school districts in eight counties.

The sponsors of the amended version of Senate Bill No. 934 were aware of these difficulties, but refused either to amend the bill further to overcome them, or to put the bill into a conference committee where the possibility of compromise could have been explored.

In essence, they have chosen a shotgun where a rifle was needed. The result is a tearing asunder of the fabric of our State-wide public school system which I cannot condone. I therefore withhold my assent.

For these reasons, the bill is not approved.

MILTON J. SHAPP

No. 3

AN ACT

SB 557

Reenacting and amending the title and act of September 9, 1965 (P.L.499), entitled "An act providing for and regulating the registration and licensing of motor vehicle and mobilehome salesmen, fixing fees, creating the State Board of Motor Vehicle Salesmen, imposing powers and duties on the Department of State, the Commissioner of Professional and Occupational Affairs and the board and prescribing unlawful acts and penalties and making an appropriation," limiting the applicability of the act, extending the provisions of the act to motor vehicle manufacturers and dealers, increasing the size of the board, establishing certain fees, providing for licensure and the imposition of penalties, and providing certain civil remedies.

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

Section 1. The title and sections 1 and 2, act of September 9, 1965 (P.L.499), known as the "Motor Vehicle Salesmen's License Act," are reenacted and amended to read:

AN ACT

Providing for and regulating the registration and licensing of motor vehicle and mobilehome *manufacturers, dealers and* salesmen, fixing fees, creating the State Board of Motor Vehicle *Manufacturers, Dealers and* Salesmen, imposing powers and duties on the Department of State, the Commissioner of Professional and Occupational Affairs and the board and prescribing unlawful acts and penalties and making an appropriation.

Section 1. Short Title.—This act shall be known and may be cited as the "Motor Vehicle *Manufacturer's, Dealer's and* Salesmen's License Act."

Section 2. Legislative Findings and Purposes.—The General Assembly of this Commonwealth finds and declares that the *distribution and* sale of new and used motor vehicles in the Commonwealth of Pennsylvania vitally affects the general economy of the Commonwealth and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to license salesmen of new and used motor vehicles, *motor vehicle manufacturers, distributors, wholesalers, dealers, salesmen, and their representatives* doing business in Pennsylvania, in order to prevent frauds, *unfairness, inequality, discrimination*, impositions and other abuses upon its citizens; and [to protect and preserve the investments and properties of the citizens of this Commonwealth] *to avoid undue control of the independent motor vehicle dealer by the motor vehicle manufacturing and distributive organizations; and to foster and keep alive vigorous and healthy*

competition for the benefit of the public by prohibiting unfair practices by which fair and honest competition is destroyed or prevented; and to protect the public against the creation or perpetuation of monopolies and practices detrimental to the public welfare; and to prevent false and misleading advertising; to prevent unfair practices by motor vehicle dealers, manufacturers, and distributing organizations; to promote the public safety and prevent deterioration of motor vehicle dealers', manufacturers' and distributing organizations' facilities for the servicing of motor vehicles and keeping same safe and properly functioning on the highways in this Commonwealth, and prevent bankrupting of motor vehicle dealers who might otherwise be caused to fail because of such unfair practices in competition, thereby resulting in unemployment, loss of tax and revenue to this Commonwealth and an inevitable train of undesirable consequences, including economic depression.

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

Section 2.1. Applicability of Act.—The provisions of this act in so far as they relate to used car dealers and used car salesmen shall not apply to those persons selling ten or less used cars per year.

Section 3. Section 3 of the act, amended July 15, 1968 (Act No. 170), is reenacted and amended to read:

Section 3. Definitions.—The following words and phrases when used in this act shall, for the purpose of this act, have the following meanings, respectively, except in those instances where the context clearly indicates a different meaning:

(1) "Board" means the State Board of Motor Vehicle *Manufacturers, Dealers and Salesmen*, which shall consist of [~~seven~~] *twelve* persons to be appointed by the Governor *with the advice and consent of the Senate* within ninety days, which shall aid and assist in the administration of this act. *The members of the board shall be residents of Pennsylvania.* The Commissioner of Professional and Occupational Affairs shall be an ex officio member of the said board. Three members of the board shall be new car dealers, as defined in the act of April 29, 1959 (P.L.58), known as "The Vehicle Code," who have been registered in the "Dealer's Class" under section 409 of "The Vehicle Code" for a period of at least five years immediately preceding their appointment. Two members of the board shall be used car dealers, as defined in "The Vehicle Code" who have been registered in the "Dealer's Class" under section 409 of "The Vehicle Code" for a period of at least five years immediately preceding their appointment. One member shall be a mobilehome dealer who has been registered in the "Dealer's Class" under section 409 of "The Vehicle Code" for a period of at least five years preceding his appointment. The mobilehome dealer member provided for herein shall be appointed for a term of three years. One member shall be a motor vehicle salesman, as defined hereinafter, who for a period of at least five years immediately

preceding his appointment has been actively engaged in the sale of new or used motor vehicles and who is not at the time of his appointment a new car dealer or used car dealer or an officer of a corporation registered in the "Dealer's Class" or a member of a partnership registered in the "Dealer's Class." They shall be appointed for terms of three years. [one of whom] *Two members shall be representatives of manufacturers who have registered as such under section 409 of "The Vehicle Code." The two manufacturer members of the board shall be appointed for terms of three years. Of the manufacturer members initially appointed, one shall be appointed for a term of two years, and one for a term of three years. Three members shall be members of the general public having no connection with the motor vehicle business. The three public members of the board shall be appointed for terms of three years. Of the public members initially appointed, one shall be appointed for a term of one year, one for a term of two years and one for a term of three years. One member of the board shall be elected chairman and one of whom shall be elected secretary. Of the members initially appointed, two shall be appointed for terms of one year, two for terms of two years and two for terms of three years, and shall hold office until their successors are appointed and qualified. In the event that any member shall die, resign or be removed from office during his term of office, his successor shall be appointed and hold office for the unexpired term. The members shall receive thirty dollars (\$30) per diem for each day actually engaged in attendance at meetings of the board. The members shall also receive the amount of actual traveling, hotel and other necessary expenses incurred in the performance of their duties under this act.*

(2) "Department" means the Department of State acting by and through the Commissioner of Professional and Occupational Affairs.

(3) "Motor vehicle dealer" means any person defined as a new car [or new mobilehome dealer] or used car [or used mobilehome] dealer in "The Vehicle Code" and who is [required] *qualified* to be registered in the "Dealer's Class" under section 409 of "The Vehicle Code," *but shall not include a new or used mobilehome dealer.*

(3.1) *"Mobilehome dealer" means any person defined as a new mobilehome dealer or used mobilehome dealer in "The Vehicle Code" and who is qualified to be registered in the "Dealer's Class" under section 409 of "The Vehicle Code."*

(4) "Motor vehicle salesman" means any person who, for a commission, compensation or other valuable consideration, is employed as a salesman by a motor vehicle or mobilehome dealer to sell at retail motor vehicles or mobilehomes. Any motor vehicle salesman licensed hereunder shall be licensed to sell only for one dealer at a time and his license shall indicate the name of the motor vehicle dealer. Included in the definition of "motor vehicle salesman" shall be the principal, an officer, or a partner of a motor vehicle or mobilehome dealer if he personally is actively engaged in the retail sale of motor vehicles.

(5) "Retail sale" or "sale at retail" means the act or attempted act of selling; bartering, exchanging or otherwise disposing of a motor vehicle or mobilehome to an ultimate purchaser for use as a consumer.

(6) "Engaging in the occupation of motor vehicle salesman" means the retail sale during a twelve-month period of five or more motor vehicles or mobilehomes.

(7) "*Manufacturer*" means any person, resident or nonresident who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis, special bodies or equipment which when installed form an integral part of the motor vehicle and which constitutes a major manufacturing alteration.

(8) "*Distributor*" or "*wholesaler*" means a person, resident or nonresident who in whole or part, sells or distributes motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

(9) "*Factory branch*" means a branch office maintained by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives.

(10) "*Distributor branch*" means a branch office similarly maintained by a distributor or wholesaler for the same purposes.

(11) "*Factory representative*" means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

(12) "*Distributor representative*" means a representative similarly employed by a distributor, distributor branch or wholesaler.

(13) "*Person*" means a person, firm, corporation or association.

(14) "*Agreement*" means a contract or franchise or any other terminology used to describe the contractual relationship between manufacturers, distributors, importers and dealers.

Section 4. Section 4 of the act is reenacted and amended to read:

Section 4. License Required to Engage in the [**Occupation**] *Business* of Motor Vehicle Salesman, *Manufacturer or Dealer*.—In order to promote the public interest and public welfare from and after six months of the effective date of this act, it shall be unlawful for any person, except as hereinafter provided, to engage in the [**occupation**] *business* of motor vehicle salesman *or motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, factory or distributor representative* within this Commonwealth unless he has secured a license as required under the provisions of this act.

Section 5. Section 5 of the act, amended July 15, 1968 (Act No. 170), is reenacted and amended to read:

Section 5. Powers and Duties of the State Board of Motor Vehicle *Manufacturers, Dealers and Salesmen*.—The board, shall have power and its duty shall be:

(1) To provide for and regulate the licensing of motor vehicle salesmen *and motor vehicle dealers and manufacturers, factory branches, distributors, distributor branches, factory or distributor representatives* and to issue except as otherwise provided herein, a license to engage in the [**occupation of motor vehicle salesman**] *said businesses* to any applicant who meets the requirements of this act.

(2) To investigate on its own initiative or upon the verified complaint in writing of any person any allegations of the wrongful act or acts of any [**motor vehicle salesman**] *licensee or person required to be licensed hereunder* and shall have the power to suspend or revoke licenses issued by the board if after due notice and hearing the person charged is found guilty of committing or attempting to commit the following acts:

(i) Knowingly making any substantial misrepresentation of material facts;

(ii) Knowingly making any false promise of a character likely to influence, persuade or induce the sale of a motor vehicle;

(iii) [**Having**] *Being a motor vehicle dealer or salesman, having* within three years prior to the application for or issuance of a license or while his current license is in force pleaded guilty, entered a plea of nolo contendere or been found guilty in a court of competent jurisdiction of this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, bribery or any other crime involving moral turpitude;

(iv) Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into his possession arising out of the sale of motor vehicles;

(v) Having engaged in false, deceptive or misleading advertising of motor vehicles;

(vi) Having committed any act or engaged in conduct in connection with the sale of motor vehicles which clearly demonstrates incompetency;

(vii) Having made a material misstatement in application for license;

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

(ix) Having engaged in the buying, selling, exchanging, trading or otherwise dealing in new or used motor vehicles on Sunday in violation of section 699.9 of the act of June 24, 1939 (P.L.872), known as "The Penal Code."

(x) *Being a motor vehicle dealer, having failed to have an "Established Place of Business" as defined in "The Vehicle Code."*

(xi) *Being a manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of said dealer and without just provocation, cancelled the franchise of any motor vehicle dealer; or being a manufacturer, factory branch or importer, who unfairly, without due regard to the equities of a distributor and without just provocation cancelled the franchise of any distributor. All existing dealers' franchises shall continue in full force and operation under a newly appointed distributor on the termination of an existing distributor unless a mutual agreement of cancellation is filed with the board between the newly appointed distributor and such dealer.*

Not less than sixty days advance notice of such termination, cancellation or failure to renew shall be given the dealer prior to the effective date thereof unless the nature or character of the reason for termination, cancellation or failure to renew is such that the giving of such notice would not be in the public interest. At any time before the effective date of such termination, cancellation or failure to renew, the dealer may appeal to the board for a hearing on the merits, and following due notice to all parties concerned, such hearing shall be promptly held. No such termination, cancellation or failure to renew shall become effective until final determination of the issue by the board. In the event of a dealer appeal, the burden of proof shall be on the manufacturer to show that such termination, cancellation or failure to renew was for good cause and in good faith.

(xii) *Having accepted an order of purchase or a contract from a buyer which offer of purchase or contract is subject to subsequent acceptance by the seller, if such arrangement results in the practice of bushing. For the purpose of this section, bushing is defined as the practice of increasing the selling price of a car above that originally quoted the purchaser or decreasing the allowance for trade-in of a used car after the purchaser has signed a purchase order or contract which is subject to subsequent acceptance by the seller: Provided, however, That if a used car is being used as the down payment and it is not to be delivered to the dealer until the delivery of the new car, the used car shall be reappraised at that time and such reappraisal value shall determine the allowance made for such used car.*

(xiii) *Being a manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such manufacturer or factory branch who, notwithstanding the terms, provisions or conditions of any franchise agreement or other writing, prevents a dealer from changing executive management other than the*

principal officer or operator of dealer if the franchise was granted in reliance upon the personal ability of such person. A dealer shall have the right to transfer, sell or issue shares of common or preferred stock of various classes or debentures to employes or personnel of the dealership or to the general public as long as the basic financial requirements of the manufacturer are maintained and continued in effect and there is no change in the executive management of dealer.

(xiv) Being a manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such manufacturer or factory branch who fails, for the protection of the buying public, to specify the delivery and preparation obligations of his dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its dealers shall be filed with the board of every licensed motor vehicle manufacturer and shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer shall constitute the manufacturer's product or warranty liability. The manufacturer shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's product or warranty defects or in connection with delivery and preparation obligations.

(3) To provide for, regulate and require all persons licensed in accordance with the provisions of this act to register biennially with the board; to prescribe the form of such registration; to require as a condition precedent to such biennial registration the payment of biennial registration fees as shall be fixed by this act and to issue biennial licenses to such persons and suspend or revoke the license of such persons who fail, refuse, or neglect to register within such time as the board shall prescribe by its rules and regulations.

(4) To keep a roster showing the names and addresses of all [**motor vehicle salesmen**] *licensees* licensed under this act, which roster shall be confidential information, except for official purposes and any person unlawfully divulging such information shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not in excess of one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment for not more than one year, or both.

(5) To keep minutes and records for all its transactions and proceedings, and copies thereof, duly certified, shall be received in evidence in all courts and elsewhere.

(6) To adopt, promulgate and enforce such administrative rules and regulations not inconsistent with this act as are deemed necessary and proper by the board to carry into effect the powers conferred by this act and to carry out the legislative intent of this act *as set forth in section 2 thereof. The board shall promote the interests of retail buyers of motor*

vehicles relating to default, delinquency, repossession or collection charges and the refund of finance charges and insurance premiums on prepayment of installment contracts. The board shall have the power in hearings arising under this act to determine the place, in this Commonwealth, where they shall be held; to subpoena witnesses; to take depositions of witnesses residing without the state, in the manner provided for in civil actions in courts of record; and to administer oaths. Whenever a hearing shall be held for the board by an examiner, he shall report his findings in writing to the board, which shall thereupon make its rulings and orders.

The provisions of this section shall not apply to anyone licensed previous to the effective date of this act and shall be applicable only to acts committed after the effective date of this act.

Section 6. Sections 6 and 7 of the act are reenacted and amended to read:

Section 6. Fees.—The fee for an applicant for licensure [as a motor vehicle salesman in this Commonwealth shall be fifteen dollars (\$15) for the initial registration, and ten dollars (\$10) for each biennial renewal thereof] shall be:

(1) *For motor vehicle salesmen, fifteen dollars (\$15) for the initial registration, and ten dollars (\$10) for each biennial renewal thereof.*

(2) *For motor vehicle dealers, twenty-five dollars (\$25) for the initial registration, and fifteen dollars (\$15) for each biennial renewal thereof. Each office or branch shall be separately licensed and shall pay the same fees. Each used car lot not immediately adjacent to the licensed premises shall be issued a supplemental license for which a biennial fee of ten dollars (\$10) shall be charged.*

(3) *For manufacturers, distributors or wholesalers, same as for dealers.*

(4) *For factory representative, or distributor branch representative, same as for salesmen.*

(5) *Manufacturers, wholesalers and distributors may operate as a motor vehicle dealer without any additional fee or license.*

Section 7. Application for License.—(a) *Application for license as a motor vehicle dealer shall be made in writing to the board, signed by the applicant, setting forth the following:*

(1) *Name of applicant and location of principal place of business;*

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

(3) *Name and address of each owner or partner and, if a corporation, the names of the officers and directors;*

(4) *The locations in which the business is to be conducted if the dealer has more than one place of business;*

(5) *If new motor vehicles are to be sold, the make or makes to be handled;*

(6) *A statement of the previous history, record, and association of the applicant and of each owner, partner, officer, and director, which statement shall be sufficient to establish to the satisfaction of the board the reputation in business of the applicant;*

(7) *A statement showing whether the applicant has previously applied for a license and the result of such application, and whether the applicant has ever been the holder of either a dealer's or salesman's license which was revoked or suspended;*

(8) *If the applicant is a corporation or copartnership, a statement showing whether any of the partners, employes, officers, or directors have been refused a dealer's or salesman's license or have been the holder of such license which was revoked or suspended.*

(b) Application for license as a motor vehicle salesman shall be made in writing to the board, signed by the applicant, setting forth the period of time, if any, during which he has been engaged in the occupation of motor vehicle salesman, the name of his last employer and the name and place of business of the motor vehicle dealer *or mobilehome dealer* then employing him or into whose employ he is then about to enter. All applications shall be made upon a form of application prepared by the board which shall include the recommendation of his employer or prospective employer certifying that the applicant is honest, trustworthy, truthful and of good repute and recommending that a license be granted. In the case of an applicant who is himself a motor vehicle *or mobilehome* dealer, an officer of a corporation which is a motor vehicle *or mobilehome* dealer, or a member of a partnership which is a motor vehicle *or mobilehome* dealer, the foregoing recommendation shall be made by another motor vehicle *or mobilehome* dealer, bank or sales finance company which has personal knowledge concerning the reputation and fitness of the applicant. The form of application shall contain such other information as the board shall require.

(c) *Application for license other than as a motor vehicle dealer or salesman shall be made in writing to the board accompanied by the required fee. The board may require in such application or otherwise, information relating to the applicant's solvency, his financial standing or other pertinent matter commensurate with the safeguarding of the public interest, all of which may be considered by said board in determining the fitness of said applicant to engage in the business for which he desires to be licensed.*

Section 7. Section 8 of the act, amended July 15, 1968 (Act No. 170), is reenacted and amended to read:

Section 8. Registration.—All applicants *for a license as a salesman* shall be issued a license upon the recommendation provided for in section 7 of this act. Provided, however, that the board may refuse to issue such license if the applicant has committed any of the acts set forth in section 5 of this act as grounds for the suspension or revocation of a motor vehicle

salesman's license *or manufacturer's license: And provided further, That applicants for a motor vehicle dealer's license shall be issued a license if they are a new car dealer, or a used car dealer, as those terms are defined in section 102 of "The Vehicle Code" and are registered with the Bureau of Motor Vehicles in the "Dealer's Class" under section 409 of "The Vehicle Code."*

Section 8. Sections 9, 10, 11 and 12 of the act are reenacted and amended or reenacted to read:

Section 9. Change of License to Indicate New Employer.—A motor vehicle salesman shall be licensed as a salesman for only one motor vehicle dealer at any one time. If a person holding a currently valid motor vehicle salesman's license, desires to be licensed as a salesman of another employer, he shall make application to the board for the issuance of a new license showing the name of his proposed new employer. Such application shall be made on a form of application prescribed by the board and shall include the recommendation of his proposed new employer similar to the requirement of section 7 of this act. The new license shall be issued for the remainder of the period covered by his previous license. The fee for the issuance of such changed license shall be five dollars (\$5).

Section 10. Exemption from Licensure and Registration.—This act shall not be construed to require licensure and registration in the following cases:

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

(2) Sales finance companies and banks licensed under the provisions of the act of June 28, 1947 (P.L.1110), known as the "Motor Vehicle Sales Finance Act" in the conduct of sales of motor vehicles which have been repossessed by them.

(3) Fleet owners, as defined in "The Vehicle Code" in the conduct of sales of motor vehicles owned by them and used in their business.

Section 11. Actions of the Board.—All actions of the board pursuant to this act which result in a refusal to issue a license or action which suspends or revokes a license shall be subject to the right of notice of hearing and adjudication and the right of appeal therefrom in accordance with the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law."

Section 12. Penalties.—Whoever engages in the occupation of motor vehicle salesman *or in the business of motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, factory or distributor representative* without being licensed and registered as required by this act or exempted therefrom as provided in this act, or shall present or attempt to use as his own the license of another or shall give any false or forged evidence of any kind to the board or to any member thereof in order to obtain a license, or shall use any expired, suspended or revoked license, or shall otherwise violate the provisions of this act shall

be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding one hundred dollars (\$100) or undergo imprisonment for a period of not more than ninety days, or both, *in the case of a person engaging in the occupation of motor vehicle salesman without being licensed as such, and a fine not exceeding five hundred dollars (\$500) or undergo imprisonment for a period of not more than ninety days, or both, in the case of a person engaging in the business of motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, factory or distributor representative without being licensed as such.*

Section 9. The act is amended by adding a section to read:

Section 12.1. Civil Damages.—Any licensee suffering pecuniary loss because of a violation by any other licensee of subclauses (xi) and (xiii) of clause (2) of section 5 or because of any unfair practice found by the board may recover damages therefor in any court of competent jurisdiction in an amount equal to the pecuniary loss together with costs including a reasonable attorney's fee.

Section 10. Section 13 of the act is reenacted and amended to read:

Section 13. Appropriation.—All fees collected under the provisions of this act during the fiscal year beginning July 1, 1965 *and thereafter* are hereby specifically appropriated to the Department of State for the use of the board in carrying out the provisions of this act.

Section 11. Sections 14, 15 and 16 of the act are reenacted to read:

Section 14. Saving Provision.—This act shall not be deemed to repeal, suspend, modify or revoke any of the provisions of "The Vehicle Code" or the "Motor Vehicle Sales Finance Act."

Section 15. Severability.—The provisions of this act are severable and, if any provision or part hereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act. It is hereby declared to be the legislative intent that this act would have been adopted if such invalid, unconstitutional or inapplicable provisions had not been included therein.

Section 16. Effective Date.—This act shall take effect immediately.

Section 12. This act shall take effect immediately.

January 26, 1972

I file herewith, in the Office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 557, Printer's No. 1447, entitled "An Act reenacting and amending the title and act of September 9, 1965 (P.L.499), entitled 'Motor Vehicle Salesmen's License Act,' limiting the applicability of the act, extending the provisions of the act to motor vehicle manufacturers and dealers, increasing the size of the board, establishing certain fees, providing for licensure and the imposition of penalties, and providing certain civil remedies."

The bill seeks to insure that independent motor vehicle dealers are not

unduly controlled by motor vehicle manufacturers. Such a purpose is commendable and it is with genuine regret that I veto Senate Bill No. 557, Printer's No. 1447. However, though the bill would protect dealers from manufacturers, it would not protect consumers from abuses in the motor vehicle industry.

I have called 1972 the year of the consumer. My administration is firmly committed to the enactment of meaningful consumer protection legislation. For example, I am seeking legislation to place consumer representatives on all professional and occupational boards.

Though I recognize that motor vehicle dealers need protection, I cannot approve a bill which not only would not provide protection to consumer interests but could open the door to consumer abuse. I will, however, work with all concerned in an effort to find a way to protect the legitimate interests of both dealers and consumers, and hope that this can be accomplished with future legislation.

For these reasons, the bill is not approved.

MILTON J. SHAPP
Governor

No. 4

AN ACT

HB 1309

Amending the act of April 9, 1929 (P.L.343), entitled "An act relating to the finances of the State government; providing for the settlement, assessment, collection, and lien of taxes, bonus, and all other accounts due the Commonwealth, the collection and recovery of fees and other money or property due or belonging to the Commonwealth, or any agency thereof, including escheated property and the proceeds of its sale, the custody and disbursement or other disposition of funds and securities belonging to or in the possession of the Commonwealth, and the settlement of claims against the Commonwealth, the resettlement of accounts and appeals to the courts, refunds of moneys erroneously paid to the Commonwealth, auditing the accounts of the Commonwealth and all agencies thereof, of all public officers collecting moneys payable to the Commonwealth or any agency thereof, and all receipts of appropriations from the Commonwealth and imposing penalties; affecting every department, board, commission, and officer of the State government, every political subdivision of the State, and certain officers of such subdivisions, every person, association, and corporation required to pay, assess, or collect taxes, or to make returns or reports under the laws imposing taxes for State purposes, or to pay license fees or other moneys to the Commonwealth, or any agency thereof, every State depository and every debtor or creditor of the Commonwealth," further providing for the rating of prime commercial paper.

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

Section 1. The General Assembly of the Commonwealth of Pennsylvania finds and declares that:

(1) It should be the policy of the Commonwealth of Pennsylvania to invest its funds so as to insure against any loss thereof.

(2) Several instances of financial failures involving commercial paper indicate the potential jeopardy in such investments unless of impeccable quality.

(3) Information indicates that Commonwealth funds are being invested in certain commercial paper not carrying the highest credit rating of recognized rating services.

(4) This practice should cease forthwith in order to prevent losses to the citizens of this Commonwealth.

Section 2. Subsection (b) of section 301.1, act of April 9, 1929 (P.L.343), known as "The Fiscal Code," amended June 18, 1968 (Act No. 102), is amended to read:

Section 301.1. Investment of Moneys.—* * *

(b) The Treasury Department may, from time to time, subject to the hereinafter stated conditions and limitations, invest and reinvest the moneys of any fund as shall have accumulated beyond the ordinary needs of the various funds, and which are not authorized by law to be invested by any board, commission or State officer in prime [rated] commercial paper.

As used herein, "commercial paper" shall mean unsecured promissory notes

issued at a discount from par *or bearing interest* by any industrial, [common carrier or finance company, and] *commercial, financial, common carrier or Public Utility Corporation and*

“Prime commercial paper” [shall mean notes issued by corporations whose credit has been approved by the National Credit Office, Inc., New York, or its successor] *means commercial paper rated by NCO/Moody’s Commercial Paper Division of Moody’s Investors Service, Inc. or by Standard and Poor’s Corporation or a successor to either such rating service.*

The Treasury Department shall have obtained the following, prior to any commitment to purchase *prime* commercial paper:

(1) A certification or other evidence that such *prime* commercial paper [is rated prime by the National Credit Office, Inc.] *holds the highest rating classification issued by the aforesaid rating services;*

(2) A certification or other evidence that the paper proposed to be delivered is not subordinated to any other debt of the issuer;

(3) A certification or other evidence that there is no litigation pending or threatened affecting said paper;

(4) A certification or other evidence that the issuer is not in default as to the payment of principal or interest upon any of its outstanding obligations; and

(5) A certification or other evidence that the issuer was incorporated within the United States, is transacting business within the United States, and has [assets of one billion dollars or more, or is a wholly owned subsidiary of a Pennsylvania corporation having assets of one billion] *a net worth of one hundred million dollars or more or is a wholly owned subsidiary of a Pennsylvania corporation having a net worth of not less than one hundred million dollars.*

The Treasury Department shall not, at any time, have invested in prime commercial paper more than an aggregate of such total sum as the Board of Finance and Revenue shall, by resolution, with the Governor’s approval, have prescribed.

January 26, 1972

I file herewith, in the Office of the Secretary of the Commonwealth, with my objections, House Bill No. 1309, Printer’s No. 2228, entitled “An Act amending the act of April 9, 1929 (P.L.343), entitled ‘The Fiscal Code,’ further providing for the rating of prime commercial paper.”

House Bill No. 1309, Printer’s No. 2228, as written, would restrict the Commonwealth’s investments in commercial paper in two ways.

First, it requires that before the State Treasury invests in such paper it must ascertain that the paper holds the highest rating classification issued by NCO/Moody Commercial Paper Division or by Standard and Poor’s.

Second, the bill requires the Treasury to obtain a certification that the issuer has a net worth of one hundred million dollars “or is a wholly-owned subsidiary of a Pennsylvania Corporation having a net worth of not less than one hundred million dollars.”

I feel that these two restrictions are unrealistic and would not necessarily work to the advantage of the Commonwealth.

The restriction to the highest rated classification would prevent the Treasury from investing in lower rated but nevertheless good commercial paper which, because it is lower rated, might bring a better return on the investment. Pennsylvania public utilities are examples of companies not in the highest rated classification. It does not seem appropriate to unduly limit the Treasurer's discretion.

The language of the second restriction is ambiguous. As it is written, the bill only requires the parent corporation to have a net worth of one hundred million dollars. The subsidiary could be completely without substance.

For these reasons, the bill is not approved.

MILTON J. SHAPP
Governor