

Section 1. Section 414.1, act of June 24, 1939 (P. L. 872), known as "The Penal Code," added December 8, 1959 (P. L. 1714), is amended to read:

Section 414.1. Malicious Use of Telephones.—Whoever telephones another person and addresses to or about such other person any lewd, lascivious or indecent words, [or] language, suggestion or proposal, or solicitation to engage in fornication or any other immoral act, or whoever anonymously telephones another person repeatedly for the purpose of annoying, molesting or harassing such other person or his or her family, [shall be deemed] is guilty of [the] a misdemeanor [of being a disorderly person] and, upon conviction, shall be fined in any sum not exceeding five hundred dollars (\$500), [to which may be added imprisonment in the county jail not exceeding six months] or undergo imprisonment for not more than one (1) year, or both: Provided, That any offense committed by the use of a telephone, as herein set out, may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

APPROVED—The 9th day of September, A. D. 1965.

WILLIAM W. SCRANTON

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No. 254

AN ACT

HB 1062

Providing for and regulating the registration and licensing of motor vehicle and mobile-home 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.

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

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

Section 2. Legislative Findings and Purposes.—The General Assembly of this Commonwealth finds and declares that the 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 doing business in Pennsylvania, in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this Commonwealth.

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 Salesmen, which shall consist of six persons to be appointed by the Governor within ninety days, which shall aid and assist in the administration of this act. 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 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 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 travel-

ing, 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 mobilehome dealer or used car or mobilehome dealer in "The Vehicle Code" and who is 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.

Section 4. License Required to Engage in the Occupation of Motor Vehicle Salesman.—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 of motor vehicle salesman within this Commonwealth unless he has secured a license as required under the provisions of this act.

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

(1) To provide for and regulate the licensing of motor vehicle salesmen and to issue except as otherwise provided herein, a license to engage in the occupation of motor vehicle salesman 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 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 within three years prior to the issuance of the license then in force 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."

(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 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,¹ 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.

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. 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.

Section 7. Application for License.—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 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 dealer, an officer of a corporation which is a motor vehicle dealer, or a member of a partnership which is a motor vehicle dealer, the foregoing recommendation shall be made by another motor vehicle 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.

Section 8. Registration.—All applicants shall be issued a license upon the recommendation provided for in section 7 of this act.

¹ "and" not in original.

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 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.

Section 13. Appropriation.—All fees collected under the provisions

of this act during the fiscal year beginning July 1, 1965 are hereby specifically appropriated to the Department of State for the use of the board in carrying out the provisions of this act.

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.

APPROVED—The 9th day of September, A. D. 1965.

WILLIAM W. SCRANTON

No. 255

AN ACT

SB 102

Amending the act of July 17, 1957 (P. L. 984), entitled “An act requiring that notice of any prior or contemporaneous severance of coal or the right of surface support from the surface be set forth in a certain manner in every deed, agreement of sale, title insurance policy, or other instrument in writing, which sells, conveys, transfers, releases, quitclaims, or agrees to sell, convey, transfer, release, or quitclaim, or insures or agrees to insure title to the surface of land, and providing for the effect upon the vendor, grantor, transferor, releasor or person who quitclaims or insures title or agrees to do any of the foregoing, for noncompliance therewith,” modifying the form of notice providing that the act does not apply to mortgage and quitclaim transactions and specifying the situations to which the act applies.

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

Section 1. Sections 1 and 2, act of July 17, 1957 (P. L. 984), entitled “An act requiring that notice of any prior or contemporaneous severance of coal or the right of surface support from the surface be set forth in a certain manner in every deed, agreement of sale, title insurance policy, or other instrument in writing, which sells, conveys, transfers, releases, quitclaims, or agrees to sell, convey, transfer, release, or quitclaim, or insures or agrees to insure title to the surface of land,