

No. 2000-75

AN ACT

HB 2200

Amending the act of December 22, 1983 (P.L.306, No.84), entitled "An act providing for the State Board of Vehicle Manufacturers, Dealers and Salespersons; and providing penalties," further defining "franchise"; and further providing for powers and duties of the State Board of Vehicle Manufacturers, Dealers and Salespersons, for protest hearing decision within 120 days unless waived by the parties, for reimbursement for all parts and service required by the manufacturer or distributor, for reimbursement audits, for unlawful acts by manufacturers or distributors, for restriction of manufacturer invoking a right of first refusal and for limitations on establishing or relocating dealers; and making editorial changes.

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

Section 1. The definition of "franchise" in section 2 of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act, amended April 19, 1996 (P.L.104, No.27), is amended to read:

Section 2. Definitions.

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

* * *

"Franchise." The written agreement between any new vehicle manufacturer or distributor and any new vehicle dealer [**or between any new vehicle manufacturer and distributor**] which purports to fix the legal rights and liabilities of the parties to such agreement, and pursuant to which the dealer [**or distributor**] purchases [**and**], resells, *services, separately services and performs warranty repairs on* the franchise product or leases or rents the dealership [**or distributorship**] premises.

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Section 2. Sections 4 and 7 of the act, amended April 19, 1996 (P.L.104, No.27), are amended to read:

Section 4. Powers and duties of board.

(a) *Powers and duties.*—The board shall have the power and its duty shall be to:

(1) Provide for and regulate the licensing of salespersons, dealers, vehicle auctions, manufacturers, factory branches, distributors, distributor branches and factory or distributor representatives as defined in this act.

(2) Review and pass upon the qualifications of applicants for licensure and to issue, except as otherwise provided herein, a license to engage in the said businesses to any applicant who is approved by the

board and who meets the requirements of this act and regulations promulgated in accordance with this act.

(3) Investigate on its own initiative, upon complaint of the Department of Transportation, Department of Community [Affairs] *and Economic Development*, Department of Revenue or the Office of the Attorney General, any law enforcement officer or upon the verified complaint in writing of any person, any allegations of the wrongful act or acts of any licensee or person required to be licensed hereunder. Duly authorized agents of the Bureau of Professional and Occupational Affairs shall be authorized to issue administrative citations for violations of this act in accordance with section 5 of the act of July 2, 1993 (P.L.345, No.48), entitled "An act empowering the General Counsel or his designee to issue subpoenas for certain licensing board activities; providing for hearing examiners in the Bureau of Professional and Occupational Affairs; providing additional powers to the Commissioner of Professional and Occupational Affairs; and further providing for civil penalties and license suspension."

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

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

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

(7) Keep a record showing the names and addresses of all licensees licensed under this act.

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

(9) Adopt, promulgate and enforce such rules and regulations consistent with this act as are deemed necessary and proper to effectuate the provisions of this act.

(10) Submit annually, to the Consumer Protection and Professional Licensure Committee of the Senate and the Professional Licensure

Committee of the House of Representatives, a description of the types of complaints received, status of the cases, board action which has been taken and length of time from the initial complaint to final board resolution.

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

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

(b) Summary proceedings.—All law enforcement officers in this Commonwealth may institute summary criminal proceedings in accordance with the Pennsylvania Rules of Criminal Procedure for violations of this act. Any person who violates this act shall be subject to criminal prosecution as provided in section 28.

Section 7. Enforcement.

[The] Notwithstanding the enforcement powers granted to law enforcement officers to institute summary criminal proceedings pursuant to section 4(b), the enforcement of the laws and rules and regulations governing practice under this act is primarily vested in the board with the following additional powers and duties to:

- (1) Inspect all license holders.
- (2) Authorize investigations of alleged violations.
- (3) Review and inspect all business records, documents and files relating to practice under this act.
- (4) Subpoena witnesses.
- (5) Take depositions of witnesses in the manner provided for in civil actions in courts of record.
- (6) Bring criminal prosecutions for unauthorized, unlicensed and unlawful practice in accordance with the terms and provisions of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.
- (7) Obtain injunctions from a court of competent jurisdiction against persons acting in violation of this act.

Section 3. Section 8 of the act is amended by adding subsections to read:
Section 8. Protest hearing decision within 120 days unless waived by the parties.

* * *

(c) Reconsideration.—In the event a decision of the board is remanded by a court of competent jurisdiction for further action by the board, the board shall consider the action and issue a final determination, not later than 120 days following receipt of the record from such court, unless the 120-day time period for the board to issue a final determination is waived or extended by the parties.

(d) Dealer protest of automobile, motorcycle or truck manufacturer act or omission.—

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

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

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

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

(5) The board shall be empowered to direct or require the automobile, motorcycle or truck manufacturer or distributor to perform such acts as necessary in order for the manufacturer or distributor to comply with the provisions of this act.

Section 4. Sections 9, 12, 16, 19, 27 and 28 of the act, amended or added April 19, 1996 (P.L.104, No.27), are amended to read:

Section 9. Reimbursement for all parts and service required by the manufacturer or distributor; reimbursement audits.

(a) Manufacturers or distributors to notify dealers of their obligations.—Each new vehicle manufacturer or distributor shall specify in writing to each of its new vehicle dealers licensed in this Commonwealth the dealer's obligations for predelivery preparation and warranty service on its products, shall compensate the new vehicle dealer for service required of the dealer by the manufacturer or distributor and shall provide the dealer with a schedule of compensation to be paid the dealer for parts, work and service, and the time allowance for the performance of such work and service.

(b) Schedule of compensation to include reasonable compensation.—In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic work, repair service, original equipment manufacturer parts and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation, the principal factors to be given consideration shall be the prevailing wage rates being paid by the dealers in the community in which the dealer is doing business. The hourly labor rate paid

to a dealer for warranty services shall not be less than the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service and repairs at a reasonable rate. This subsection shall not apply to manufacturers or distributors of manufactured housing or recreational vehicles.

(c) Copy of obligation to be filed with board.—A copy of the delivery and preparation obligations of its dealers shall be filed with the board by every vehicle manufacturer and shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer.

(d) Indemnification required.—Notwithstanding the terms of any franchise agreement, it shall be a violation for any new vehicle manufacturer to fail to indemnify its franchised dealers against any judgment for damages or settlement approved in writing by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the new vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty or rescission of the sale as defined in 13 Pa.C.S. § 2608 (relating to revocation of acceptance in whole or in part) to the extent that the judgment or settlement relates solely to the alleged defective or negligent manufacture, assembly or design of new vehicles, parts or accessories or other functions by the manufacturer or distributor beyond the control of the dealer.

(e) Warranty reimbursement and incentive or reimbursement program approval and audits.—

(1) Any warranty, recall, service contract or any other required service parts or labor reimbursement claim or incentive or reimbursement program claim filed by the dealer with the manufacturer or distributor in the manner and on forms the manufacturer or distributor reasonably prescribes which is not specifically disapproved in writing or by electronic transmission 30 days after receipt by the manufacturer or distributor is considered approved and payment to the dealer must follow within 30 days.

(1.1) Where the automobile, motorcycle or truck manufacturer or distributor disapproves any claim, the manufacturer or distributor shall describe in writing or by electronic transmission what reasonable corrective action the dealer must perform to receive payment for the claim, or the claim shall be deemed approved within 30 days of the original disapproval and payment to the dealer shall be made within 30 days of the deemed approval. The automobile, motorcycle or truck manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed if the dealer has reasonably substantiated the claim in accordance with reasonable written requirements of the manufacturer or distributor, provided that the dealer has been notified

of the requirements prior to the time the claim arose and the requirements were in effect at the time the claim arose.

(2) The manufacturer or distributor shall be permitted to audit claims within a two-year period from the date the claim was paid or credit issued by the manufacturer or distributor and to charge back any false or unsubstantiated claims. If there is evidence of fraud, this subsection does not limit the right of the manufacturer or distributor to audit for longer periods and charge back for any fraudulent claim, subject to the limitations period under 42 Pa.C.S. (relating to judiciary and judicial procedure).

(f) Applicability.—This section shall also apply to each medium-duty and heavy-duty truck component and engine manufacturer or distributor that provides integral parts of vehicles, provides major components by selling directly to dealers or who enters into a contract with a medium-duty and heavy-duty truck dealer which authorizes the dealer to perform warranty or other services on the products produced or distributed.

Section 12. Unlawful acts by manufacturers or distributors.

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

(1) Order or accept delivery of any new vehicle, part or accessory thereof, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the new vehicle dealer, except that this paragraph is not intended to modify or supersede any terms or provisions of the franchise requiring new vehicle dealers to market a representative line of those vehicles which the manufacturer or distributor is publicly advertising.

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

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

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

(5) Change the capital structure of the new vehicle dealer or the means by or through which the new vehicle dealer finances the operation of the dealership, provided that the new vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer or distributor in accordance with uniformly applied criteria, and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor. The consent shall be granted or denied within 60 days of receipt of a written request from the new vehicle dealer.

(6) Refrain from participation in the management of, investment in or the acquisition of any other line of new vehicle or related products. This paragraph does not apply unless the new vehicle dealer maintains a reasonable line of credit for each make or line of new vehicle, the new vehicle dealer remains in compliance with *the reasonable terms of* the franchise agreement and any reasonable facilities requirements of the manufacturer or distributor, and no change is made in the principal management of the new vehicle dealer. The reasonable facilities requirements shall not include any requirement that a new vehicle dealer establish or maintain exclusive facilities, personnel or display space when such requirements or any of them would be unreasonable in light of economic conditions and would not otherwise be justified by reasonable business considerations. **[Nothing in this paragraph shall permit] Before** the addition of a line-make to the dealership facilities **[without the written], the new vehicle dealer shall first request the** consent of the manufacturer or distributor **if required by the franchise agreement**. Any **[consent required from] decision of** the manufacturer or distributor with regard to **[dualling] dualing** of two or more franchises shall be **[granted or denied] rendered** within 60 days of receipt of a written request from the new vehicle dealer. **Failure on the part of the manufacturer or distributor to timely respond to a dualing request shall be deemed to be an approval of the new vehicle dealer's request. No automobile, motorcycle or truck manufacturer or distributor shall limit or restrict the addition of a line-make to the dealership facilities where the new vehicle dealer maintains a reasonable line of credit for each make or line of new vehicle and the new vehicle dealer remains in compliance with the reasonable terms of the franchise agreement and any reasonable facilities requirements of an automobile, motorcycle or truck manufacturer or distributor.**

(7) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this act or to require any controversy between a new vehicle dealer and a manufacturer, distributor or representative to be referred to any person other than the duly constituted courts of the Commonwealth or the United States of America, if such referral would be binding upon the new

vehicle dealer. A dealer and the manufacturer, distributor or representative, by themselves or through their respective counsel, are permitted to agree to execute a written agreement or to arbitrate in a binding or nonbinding manner after a controversy arises.

(8) Expand, construct or significantly modify facilities without assurances that the manufacturer or distributor will provide a reasonable supply of new vehicles within a reasonable time so as to justify such an expansion in light of the market and economic conditions or require a separate facility for the sale or service of a line-make of a new vehicle if the market and economic conditions do not clearly justify the separate facility.

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

(b) Violations.—It shall be a violation of this act for any manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such manufacturer, factory branch or distributor licensed under this act to:

(1) Delay, refuse or fail to deliver new vehicles or new vehicle parts or accessories in a reasonable time and in reasonable quantity relative to the new vehicle dealer's facilities and sales potential after acceptance of an order from a new vehicle dealer having a franchise for the retail sale of any new vehicle sold or distributed of an order from a new vehicle dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor as are covered by such franchise, if such vehicle, parts or accessories are publicly advertised as being available for immediate delivery. There is no violation if the failure is caused by acts or causes beyond the control of the manufacturer or distributor.

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

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

(4) Arbitrarily and capriciously withhold consent to the relocation of an existing new vehicle dealer.

(5) Fail to respond in writing to a request for consent as specified in paragraphs (3) and (4) within 60 days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for such purposes and containing the information required. The failure to respond *within the time period set forth in this paragraph* shall be

deemed to be approval of the request, *and the manufacturer or distributor shall execute and deliver a franchise to the applicant within 30 days of the expiration of this time period.* A manufacturer or distributor shall acknowledge in writing to the applicant the receipt of the forms, and, if the manufacturer or distributor requires additional information to complete its review, the manufacturer or distributor shall notify the applicant within 15 days of the receipt of the forms. If the manufacturer or distributor fails to request additional information from the applicant within 15 days after receipt of the initial forms, the 60-day time period for approval shall be deemed to run from the initial receipt date. Otherwise, the 60-day time period for approval shall run from receipt of the supplemental requested information. In no event shall the total time period for approval exceed 75 days from the date of the receipt of the initial forms.

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

(7) Offer in connection with a sale of a new vehicle or vehicles to the Federal Government, the Commonwealth or any political subdivision thereof, any discounts, refunds or any other type of inducement to any new vehicle dealer without making the same offer or offers available to all other of its new vehicle dealers within this Commonwealth. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts if the discounts are equally available to all franchised vehicle dealers in this Commonwealth on a proportionally equal basis.

(8) Fail to indemnify its franchised dealers, notwithstanding the terms of any franchise agreement, against any judgment for damages or settlement approved in writing by the manufacturer or distributor, including, but not limited to, court costs and reasonable attorney fees of the new vehicle dealer, arising out of complaints, claims or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty or rescission of the sale as defined in 13 Pa.C.S. § 2608 (relating to revocation of acceptance in

whole or in part) to the extent that the judgment or settlement relates solely to the alleged defective or negligent functions by the manufacturer or distributor beyond the control of the dealer.

(9) Sell or exchange with a second or final stage manufacturer, retail consumer or end user except through a licensed new vehicle dealer. This paragraph shall not apply to manufacturer or distributor sales of new vehicles to the Federal Government, charitable organizations and employees of the manufacturer **[or distributor or to motorcycle manufacturers or distributors]**.

(10) (i) Modify a franchise during the term of the franchise or upon its renewal if the modification substantially and adversely affects the new vehicle dealer's rights, obligations, investment or return on investment without giving 60 days' written notice of the proposed modification to the new vehicle dealer unless the modification is required by law, court order or the board. Within the 60-day notice period, the new vehicle dealer may file with the board and serve notice upon the manufacturer or distributor a protest requesting a determination of whether there is good cause for permitting the proposed modification. The board shall promptly schedule a hearing and decide the matter within 180 days from the date the protest is filed. Multiple protests pertaining to the same proposed modification shall be consolidated for hearing. The proposed modification shall not take effect pending the determination of the matter. In determining whether there is good cause for permitting a proposed modification, the board shall consider any relevant factors, including, but not limited to:

(A) The reasons for the proposed modification.

(B) Whether the proposed modification is applied to or affects all new vehicle dealers in a nondiscriminatory manner.

(C) Whether the proposed modification will have a substantial and adverse effect upon the new vehicle dealer's investment or return on investment.

(D) Whether the proposed modification is in the public interest.

(E) Whether the proposed modification is necessary to the orderly and profitable distribution of products by the manufacturer or distributor.

(F) Whether the proposed modification is offset by other modifications beneficial to the new vehicle dealer.

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

(11) Fail or refuse to offer to its new vehicle dealers all new model vehicles manufactured for that line-make franchise or require any of its new vehicle dealers to pay an unreasonable fee, unreasonably remodel or renovate the new vehicle dealer's existing facilities, unreasonably purchase or construct a new facility, unreasonably

purchase parts, supplies, tools, equipment, operational services, other merchandise or unreasonably participate in training programs in order to receive any new model vehicles, parts or accessories. It shall not be a violation of this paragraph if the manufacturer or distributor fails to supply new vehicle dealers with model vehicles, parts or accessories due to circumstances beyond the control of the manufacturer or distributor, including, but not limited to, strike or labor difficulty, shortage of materials, freight embargo or temporary lack of capacity.

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

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

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

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

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

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

(18) Vary the price charged to any of its new vehicle dealers, which has the effect of causing a difference in the price of any similarly equipped new vehicle to its new vehicle dealers or to the ultimate purchaser. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts if the incentive or

discounts are available to all competing new vehicle dealers of the same line-make in this Commonwealth on a proportionately equal basis.

(c) Restriction on ownership of dealer.—

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

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

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

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

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

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

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

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

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

(ii) Has an ownership interest in the dealer.

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

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

(6) A manufacturer may own, directly or indirectly, an interest in an entity that owns, operates or controls a motor vehicle dealership trading solely in motor vehicles having a gross vehicle weight less than 8,500 pounds that are of the same line-make franchised by the manufacturer, provided that each of the following conditions are met:

(i) All of the motor vehicle dealerships selling such manufacturer's motor vehicles in this Commonwealth trade exclusively in the manufacturer's line-make.

(ii) All of the manufacturer's franchise agreements confer rights on the dealer of the line-make to develop and operate, within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate.

(iii) Not fewer than half of the dealers of the line-make within this Commonwealth own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(iv) During any period in which the manufacturer has such an ownership interest, the manufacturer has no more than 12 franchise agreements with new motor vehicle dealers licensed by the board to do business within this Commonwealth.

(v) Except as otherwise permitted under other provisions of this act, the manufacturer does not acquire or hold, either directly or indirectly, an ownership interest of more than 45% in any motor vehicle dealership that the manufacturer did not already own, directly or indirectly, as of the effective date of this subsection.

(vi) As of the effective date of this subsection, the manufacturer shall have continuously owned, directly or indirectly, for a period of not less than 18 months, one or more new motor vehicle dealerships in this Commonwealth of the same line-make as the manufacturer.

(d) Applicability.—

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

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

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

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

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

Section 16. Manufacturer right of first refusal.

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

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

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

(i) The manufacturer or distributor shall have the right to and shall assume the dealer's lease for, or acquire the real property on which the franchise is conducted, on the same terms as those on which the real property or lease was to be sold or transferred to the proposed new owner in connection with the sale of the franchise, unless otherwise agreed to by the dealer and manufacturer or distributor. The manufacturer or distributor shall have the right to assign the lease or to convey the real property.

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

(3) The proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one

or more dealer owners to a designated family member or members, the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner, of one or more dealer owners or to a qualified manager or to a partnership or corporation controlled by such persons.

(4) The manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney fees which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such an accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

Section 19. Grounds for disciplinary proceedings.

[The] *In addition to any criminal or civil penalties otherwise provided in this act, the* board shall have the power to formally reprimand, suspend or revoke any license or refuse to issue or renew any license of an applicant or licensee or a person required to be licensed under this act, if after due notice of and hearing, the person charged is found in violation of or fails to carry out the acts and procedures set forth in this act or is found guilty of committing or attempting to commit any of the acts set forth in section 23 or any of the following acts:

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

(2) Make any substantial misrepresentation of material facts.

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

(4) Being a vehicle dealer or salesperson, having within five 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 in this or any other state or Federal jurisdiction of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, bribery, odometer tampering or any other crime involving moral turpitude.

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

- (6) Having engaged in false, deceptive or misleading advertising of vehicles.
- (7) Having committed any act or engaged in conduct in connection with the sale of vehicles which clearly demonstrates unprofessional conduct or incompetency to operate as a licensee under this act.
- (8) Having made a material misstatement in application for licensure.
- (9) Having set up, promoted or aided in promotion of a plan by which vehicles are sold to a person for 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.
- (10) Having engaged in the buying, selling, exchanging, trading or otherwise dealing in vehicles on Sunday in violation of 18 Pa.C.S. § 7365 (relating to trading in motor vehicles and trailers). Manufactured housing is permitted to be sold on Sundays by licensed manufactured housing dealers without being subject to prosecution under this paragraph.
- (11) Being a dealer or broker who advertises or otherwise holds out to the public that he is selling new vehicles for which he does not hold a franchise agreement in writing with a manufacturer or distributor giving the dealer authority to sell the particular line-make of new vehicles.
- (12) Being a dealer or broker who sells new vehicles for which he does not hold a franchise agreement in writing with a manufacturer or distributor giving the dealer authority to sell the particular line-make of new vehicles.
- (13) Failing to take immediate remedial action when the dealer knows that someone in his direct employ or someone who renders vehicle-related services to the dealer for consideration, has unlawfully tampered with the odometer of a vehicle in his care, custody or control or which has been sold or exchanged by the dealer. For the purpose of this paragraph, remedial action shall be defined as at least reporting the incident in writing to the Pennsylvania State Police or the board.
- (14) Engaging in the business for which such licensee is licensed without at all times maintaining an established place of business as required.
- (15) Employing any person as a salesperson who has not been licensed as required.
- (16) Having had his vehicle business registration plates (dealer identification number) suspended or revoked by the Department of Transportation pursuant to 75 Pa.C.S. § 1374(a) (relating to suspension or revocation of vehicle business registration plates). A certified copy of

the decision and order of the Department of Transportation will constitute conclusive evidence.

(17) Being a new car dealer whose franchise agreement with a manufacturer or distributor, which gives the subject dealer selling rights for that line-make, has been finally terminated, but who continues to sell new vehicles. A recreational vehicle or manufactured housing dealer, whose franchise was terminated or failed to be renewed by either the manufacturer or the dealer, who owned new vehicles prior to the termination or nonrenewal and sold them subsequent to the termination or nonrenewal is exempt from prosecution under this paragraph. Such dealers shall be authorized to sell as new all new vehicles that remain on their lot after a franchise is terminated or failed to be renewed.

(18) Willfully failing to display a license.

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

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

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

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

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

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

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

(26) Violating any provision of this act.

(27) Being an unlicensed salesperson, dealer, vehicle auction, branch lot, manufacturer or any other person or business where a license is required under this act.

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

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

(29.1) Being a wholesale vehicle auction who permits a vehicle business as described under paragraph (29), which is restricted to certain vehicle buys, sales or exchanges as set forth in section 5(f)(2), to buy,

sell or exchange vehicles of a type which the vehicle business is not authorized to engage in.

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

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

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

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

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

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

(36) Accepting 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.

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

(38) Being a person whose license under this act or authority to engage as a dealer or salesperson in any other state or jurisdiction was suspended or revoked and, while the license or authority was suspended or revoked, was physically present at a wholesale vehicle auction or public or retail vehicle auction during the auctioning of vehicles. A vehicle auction shall not be subject to prosecution for a violation of a person being physically present under this paragraph.

Section 27. Limitations on establishing or relocating dealers.

(a) Additional or relocation of new vehicle dealers.—

(1) In the event that a manufacturer seeks to enter into a franchise establishing an additional new vehicle dealer or relocating an existing new vehicle dealer within or into a relevant market area where the same line-make is then represented, the manufacturer shall in writing first notify the board and each new vehicle dealer in such line-make in the

relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 20 days after the end of any appeal procedure provided by the manufacturer, any such new vehicle dealer may file with the board a protest to the establishing or relocating of the new vehicle dealer. When such a protest is filed, the board shall inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish the proposed new vehicle dealer or relocate the new vehicle dealer until the board has held a hearing, nor thereafter, if the board has determined that there is good cause for not permitting the addition or relocation of such new vehicle dealer.

[(1)] (2) The notice required by this subsection shall include the following information:

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

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

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

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

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

relocate an existing vehicle warranty service facility within or into the affected market areas.

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

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

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

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

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

(iv) When such a protest is filed, the board shall inform the automobile, motorcycle or truck manufacturer that a timely protest has been filed and that the automobile, motorcycle or truck manufacturer shall not establish the proposed vehicle warranty service facility or relocate the vehicle warranty service facility until the board has held a hearing nor thereafter if the board has determined that there is good cause for not permitting the addition or relocation of such vehicle warranty service facility.

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

(b) Nonapplicability of section.—This section does not apply:

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

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

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

(4) To manufactured housing or recreational vehicle dealers.

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

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

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

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

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

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

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

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

Section 28. Penalties.

(a) **[Unlicensed salespersons and brokers]** *Criminal penalties for violation of this act.*—Whoever **[engages in the occupation of vehicle salesperson in connection with the sale of a vehicle or of a manufactured house or mobile home in a mobile home park, without being licensed and registered as required by this act or exempted from licensure or sells or acts as a broker without a license 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 in order to obtain a license, or shall refuse upon request to furnish business records, documents and files relating to practice under this act, or shall otherwise violate the provisions of this act shall be guilty of a summary offense and, upon conviction, shall be ordered to pay a fine of \$1,000. **[A second violation of this act shall constitute a summary offense and, upon conviction, the violator shall be ordered to pay a fine of \$1,000. For the purpose of this act the sale of each vehicle in violation of this act constitutes a separate offense.]** *A licensee shall be subject to criminal prosecution under this subsection for violation of any provision of this act.*

(b) **[Unlicensed manufacturers, etc]** *Criminal penalties for unlicensed activity.*—Whoever engages in the business of vehicle dealer, manufacturer, factory branch, distributor, distributor branch, *auction or broker or engages*

in the occupation of vehicle salesperson or factory or distributor representative without being licensed and registered as required or exempted from licensure as provided, 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 in order to obtain a license or shall refuse, upon request, to furnish business records, documents and files relating to practice or shall otherwise violate the provisions of this act], shall be guilty of a summary offense and, upon conviction, shall be sentenced to pay a fine of \$1,000 or any higher amount equal to double the pecuniary gain derived from the offense. For the purpose of this act the sale of each vehicle in violation of this act constitutes a separate offense.

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

Section 5. This act shall take effect in 60 days.

APPROVED—The 18th day of October, A.D. 2000.

THOMAS J. RIDGE