

No. 1983-84

AN ACT

HB 1454

Providing for the State Board of Vehicle Manufacturers, Dealers and Salespersons; and providing penalties.

TABLE OF CONTENTS

- Section 1. Short title.
- Section 2. Definitions.
- Section 3. State Board of Vehicle Manufacturers, Dealers and Salespersons.
- Section 4. Powers and duties of board.
- Section 5. License to engage in business.
- Section 6. Biennial renewal.
- Section 7. Enforcement.
- Section 8. Warranty and predelivery obligations.
- Section 9. Unlawful acts by manufacturers, factory branches, distributors, field representatives, officers, agents or any representatives of manufacturers, factory branches or distributors.
- Section 10. Grounds for disciplinary proceedings.
- Section 11. Administrative liability of employer, copartnership, association or corporation.
- Section 12. Reinstatement.
- Section 13. Application for license.
- Section 14. Refusal of license.
- Section 15. Change of salesperson's license to indicate new employer.
- Section 16. Termination of employment or business.
- Section 17. Exemption from licensure and registration.
- Section 18. Limitations on establishing or relocating dealers.
- Section 19. Penalties.
- Section 20. Civil actions for violations.
- Section 21. Fees.
- Section 22. Disposition of fees and fines.
- Section 23. Vehicle shows and exhibitions.
- Section 24. Savings provision.
- Section 25. Reestablishment of agency.
- Section 26. Repeals.
- Section 27. Expiration of terms of board members.
- Section 28. Existing rules and regulations.
- Section 29. Effective date.

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 Board of Vehicles Act.

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:

“Agreement.” A contract or franchise or any other written instrument which describes the contractual relationship between a manufacturer, distributor, importer or dealer and at least one other person.

“Board.” The State Board of Vehicle Manufacturers, Dealers and Salespersons.

“Branch lot.” An office and lot maintained in addition to the main office and lot of a licensed vehicle dealer. The branch lot shall meet the facility requirements defined herein and by regulations as a main lot, unless used solely for the storage of vehicles.

“Broker.” Any person who, for a commission, compensation or other valuable consideration, engages or participates in the wholesale or retail sale in one calendar year of five or more used vehicles or any new vehicle as the agent for the buyer or seller. For the purposes of this definition, the broker need not have custody or control of the subject vehicle but shall have the authority of the buyer or seller to negotiate or conduct a transaction on behalf of the buyer or seller. This definition shall specifically include car auctions: Provided, however, That a person licensed as a broker who is solely engaged in the business of conducting a car auction shall not be required to meet the facilities requirements as noted herein.

“Bushing.” The practice of increasing the selling price of a vehicle above that originally quoted the purchaser or decreasing the allowance for trade-in of a used vehicle after the purchaser has signed a purchase order or contract which is subject to subsequent acceptance by the seller. If a used vehicle is being used as the down payment and it is not to be delivered to the dealer or broker until delivery of the new vehicle, the used vehicle may be reappraised at that time if the dealer or broker can establish that the vehicle has suffered damage or serious mechanical deterioration since date of original valuation. Reappraisal value may determine the allowance made for such used car.

“Curb-stoner or unlicensed salesperson.” Any person who, for a commission, compensation or other valuable consideration, and without being licensed in accordance with this act as a salesperson, engages in the wholesale or retail sale, exchange or purchase in one calendar year of five or more used vehicles or any new vehicle.

“Dealer.” A person may obtain a license in one or more of the following areas:

- (1) A person engaged in and devoting a substantial portion of time to the business of buying, selling or exchanging new and used vehicles, trailers or semitrailers on commission, compensation or other consideration, who holds a written contract with a manufacturer, importer or distributor, giving such person selling rights for new motor vehicles, trailers or semitrailers, or who is an importer or distributor of new motor vehicles, trailers

or semitrailers who holds a contract in writing with a manufacturer of motor vehicles, trailers and semitrailers.

(2) A person engaged in and devoting a substantial portion of time to the business of buying, selling or exchanging used vehicles, tractors, trailers or semitrailers on commission, compensation or other consideration. The term includes fleet owners who engage directly in the retail sale of fleet vehicles.

(3) A person engaged in and devoting a substantial portion of time to the business of buying, selling or exchanging mobile homes, house trailers or office trailers on commission, compensation or other consideration.

(4) A person engaged in and devoting a substantial portion of time to the business of buying, selling or exchanging used mobile homes, house trailers or office trailers on commission, compensation or other consideration.

(5) A person engaged in and devoting a substantial portion of time to the business of buying, selling or exchanging new and used recreational vehicles on commission or otherwise. Recreational vehicles shall include motor homes, house trailers or slide-in campers.

(6) A person engaged in and devoting a substantial portion of his time to the business of buying, selling or exchanging used recreational vehicles on commission or otherwise.

“Department.” The Department of State acting through the Commissioner of Professional and Occupational Affairs.

“Distributor.” A person, resident or nonresident, who sells or distributes vehicles to dealers or who maintains distributor representatives.

“Distributor branch.” A branch office similarly maintained by a distributor or wholesaler for like purposes.

“Distributor representative.” A representative similarly employed by a distributor, distributor branch or wholesaler.

“Established place of business.” A permanent, enclosed building as more specifically defined by regulation which is accessible and open to the public at all reasonable times and at which the business of a new or used vehicle dealer, including the display and repair of vehicles, may be lawfully conducted in accordance with the terms of applicable building codes, zoning and other land-use regulatory ordinances.

“Factory branch.” A branch office maintained by a manufacturer for the sale of vehicles to distributors or dealers or for directing or supervising, in whole or part, its representatives.

“Factory representative.” A representative employed by a manufacturer or by factory branch for the purpose of making or promoting the sale of its vehicles or for supervising or contacting its dealers or prospective dealers.

“Fleet owner.” Any person who owns a group of 15 or more vehicles.

“Franchise.” The written agreement or contract between any new vehicle manufacturer and any new vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchise product or leases or rents the dealership premises.

“Manufacturer.” Any person, resident or nonresident, who manufactures or assembles vehicles or who manufactures or installs on previously assembled chassis special bodies or equipment which when installed form an integral part of a vehicle and which constitute a major manufacturing alteration.

“Motorcycle.” A vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

“Off-premise sale.” A sale for a fixed and limited period of time held in the normal marketing area of the participating dealer or dealers, which is conducted for the purpose of exhibiting and selling vehicles at a geographical location not normally used as a dealership.

“Person.” Any individual, corporation, partnership, association or other entity foreign or domestic.

“Recreational vehicle.” A vehicular unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle but shall not include a camping trailer. The basic entities are: travel trailer, house trailer, slide-in camper and motor home.

“Relevant market area.” The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new vehicle dealer, the relevant market area shall be in all instances, except for cities of the first and second class which will be the area within a five-mile radius, the area within a radius of ten miles around the proposed site. Relevant market area shall not apply to mobile home or recreational vehicle dealer or manufacturer agreements.

“Retail sale” or “sale at retail.” The act or attempted act of selling, bartering, exchanging or otherwise disposing of a vehicle to an ultimate purchaser.

“Salesperson.” Any person who, for a commission, compensation or other valuable consideration, is employed as a salesperson by a dealer to sell vehicles at retail. Any salesperson licensed hereunder shall be licensed to sell only for one dealer at a time and his license shall indicate the name of that dealer. The term includes the principal, an officer or a partner of a dealer if he personally is actively engaged in the retail sale of vehicles.

“Vehicle.” Every device which is or may be moved or drawn upon a highway, except devices designed primarily for use in construction or agriculture or road maintenance, devices moved by human or animal power, those used exclusively upon rails or tracks or motorized pedalcycles.

“Wholesaler.” A resident person who is in the business of buying, selling or exchanging vehicles to dealers.

Section 3. State Board of Vehicle Manufacturers, Dealers and Salespersons.

(a) **Board.**—The State Board of Vehicle Manufacturers, Dealers and Salespersons shall consist of 17 members, one of whom shall be the Commissioner of Professional and Occupational Affairs, one of whom shall be the

Secretary of the Department of Transportation, or his designee, one of whom shall be the Director of Consumer Protection in the Office of Attorney General, or his designee, and the remaining 14 of whom shall be appointed by the Governor as follows:

(1) Three members shall be new car dealers who have been actively engaged as such for a period of five years immediately preceding their appointment.

(2) Three members shall be used car dealers who have been actively engaged as such for a period of five years immediately preceding their appointment.

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

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

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

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

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

(b) Terms of members.—The terms of the members of the board shall be three years from the respective date of their appointment, provided that a member may continue for a period not to exceed six months beyond the expiration of his term if a successor has yet to be duly appointed and qualified according to law. In the event that any member shall die, resign or be removed from office, his successor shall be appointed and hold office for the unexpired term.

(c) Quorum.—Nine members of the board shall constitute a quorum. The board shall select, from among their number, a chairman and a secretary.

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

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

Section 4. Powers and duties of board.

The board shall have the power and its duty shall be to:

(1) Provide for and regulate the licensing of salespersons, dealers, brokers, manufacturers, factory branches, distributors, distributor branches, factory or distributor representatives and wholesalers 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.

(3) Investigate on its own initiative, upon complaint of the Department of Transportation, Department of Community Affairs, Department of Revenue or the Office of the Attorney General, 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.

(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.

(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 not inconsistent with this act as are deemed necessary and proper to effectuate the provisions of this act, including but not limited to, established place of business.

(10) Submit annually, to the Transportation Committees of the House and Senate, 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.

Section 5. License to engage in business.

(a) License required.—To promote the public safety and welfare, it shall be unlawful for any person to engage in the business of salesperson, broker, dealer, manufacturer, factory branch, distributor, distributor branch,

factory or distributor representative or wholesaler within this Commonwealth unless he has secured a license as required under this act.

(b) Mobile home parks.—It shall be unlawful for any person, for a commission, compensation or other consideration, to sell or act as salesperson, broker or sales agent in connection with the sale of one or more mobile homes located in a mobile home park, as provided for in section 11 of the act of November 24, 1976 (P.L. 1176, No. 261), known as the Mobile Home Park Rights Act, unless such person shall be licensed under this act.

(c) Salespersons to be employed.—It shall be unlawful for any salesperson to engage in any activity related to the buying, selling or exchanging of a vehicle, unless that person is the dealer or presently employed by a currently licensed vehicle dealer and the sale is conducted pursuant to and as part of the normal business activities of that dealer.

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

(e) Facility requirements for dealers and brokers.—

(1) Dealers and brokers engaged in the business of buying, selling or exchanging new and used vehicles, trailers or semitrailers shall maintain a salesroom or garage devoted principally to the motor vehicle business and an established place of business.

(2) Dealers and brokers engaged in the business of buying, selling or exchanging used vehicles, trailers or semitrailers shall maintain an established place of business, which includes at least a two bay garage equipped to perform the usual and normal repair and servicing of motor vehicles (or said dealer or broker shall by written contract have available at all times to him such repair and servicing facilities) and upon which or adjacent thereto is a building or portion of a building, owned or rented by such person, where books and records are kept.

(3) Dealers and brokers engaged in the business of buying, selling or exchanging new and used mobile homes, house trailers or office trailers shall maintain a minimum usable display area of 5,000 square feet devoted principally to the mobile home, house trailer or office trailer business, maintain an established place of business and hold a contract in writing with a buyer, seller or manufacturer giving such person buying or selling rights for new mobile homes, house trailers or office trailers.

(4) Dealers and brokers engaged in the business of buying, selling or exchanging used mobile homes, house trailers or office trailers shall maintain a minimum usable display area of 5,000 square feet, actually occupied by such person, and upon which or adjacent thereto is a building, or a portion of a building, owned or rented by such person, where his books and records are kept and which is devoted principally to the mobile home, house trailer or office trailer business, in which the repair of such vehicles is subordinate or incidental to the business of buying, selling or exchanging such vehicles and who maintains an established place of business.

(5) Dealers and brokers engaged in the business of buying, selling or exchanging new or used recreational vehicles shall maintain an established place of business and a minimum usable display area of 5,000 square feet devoted principally to the recreational vehicle business.

Section 6. Biennial renewal.

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

Section 7. Enforcement.

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.

Any hearing on a protest by a dealer of any action by a manufacturer alleged to be in violation of a provision of this act must be conducted and the final determination made within 120 days after the protest is filed. Unless waived by the parties, failure to do so will be deemed the equivalent of a determination that the manufacturer acted with good cause and, in the case of a protest of a proposed establishment or relocation of a dealer under section 10, that good cause does not exist for refusing to permit the proposed additional or relocated new vehicle dealer, unless such delay is caused by acts of the manufacturer or the additional or relocating dealer. Any parties to such a hearing shall have a right of review of the decision in a court of competent jurisdiction pursuant to 2 Pa.C.S. § 701 (relating to scope of subchapter). If the board determined that good cause does not exist for refusing to permit the proposed additional or relocated new vehicle dealer, and the manufacturer thereafter enters into a franchise establishing that new vehicle dealer, the manufacturer shall not be liable for damages based upon such establishment even if a court reverses the determination of the board.

Section 8. Warranty and predelivery obligations.

(a) Manufacturers to notify dealers of their obligations.—Each new vehicle manufacturer 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 and shall provide the dealer with the 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 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.

(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 beyond the control of the dealer.

Section 9. Unlawful acts by manufacturers, factory branches, distributors, field representatives, officers, agents or any representatives of manufacturers, factory branches or distributors.

(a) Unlawful acts by manufacturers.—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 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 cancel a franchise or any contractual agreement existing between the dealer and the manufacturer, 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 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 not be unreasonably withheld.

(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 franchise agreement and any reasonable facilities requirements of the manufacturer, and no change is made in the principal management of the new vehicle dealer.

(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.

(8) Expand, construct or significantly modify facilities without assurances that the franchisor 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.

(b) Additional unlawful acts of manufacturers.—It shall be a violation of this act for any 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 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.

(2) Unfairly discriminate among its new vehicle dealers with respect to warranty 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.

(4) Fail to respond in writing to a request for consent as specified in paragraph (3) 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. Such failure to respond shall be deemed to be refusal to consent to the request.

(5) 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, 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 rejects a proposed change in executive management control, the manufacturer shall give written notice of his 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.

(6) 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.

(c) Canceling of franchises.—It shall be a violation of this act for any manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of a vehicle manufacturer or factory branch to unfairly, without due regard to the equities of said dealer and without just provocation, cancel the franchise of any vehicle dealer; or being a manufacturer, factory branch or importer, to unfairly, without due regard to the equities of a distributor and without just provocation cancel 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 60 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.

(d) **Bushing.**—It shall be a violation for any vehicle dealer or broker 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 subsection, 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, however, if a used car is being used as the down payment and it is not to be delivered to the dealer or broker 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.

(e) **Construction of section.**—This section shall not be construed to prevent the offering of incentive programs or other discounts if such discounts are equally available to all franchised vehicle dealers in this Commonwealth on a proportionately equal basis.

Section 10. Grounds for disciplinary proceedings.

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 sections 5 and 8 or is found guilty of committing or attempting to commit any of the acts set forth in section 13 or any of the following acts:

(1) Having had his 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) Knowingly make any substantial misrepresentation of material facts.

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

(4) Being a vehicle dealer, broker or salesperson, 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 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 knowingly 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 incompetency.

(8) Having made a material misstatement in application for license.

(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).

(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 contract in writing with a manufacturer, importer or distributor giving said dealer authority to sell such vehicles.

(12) Being a dealer or broker who sells new vehicles for which he does not hold a contract in writing with a manufacturer, importer or distributor giving said dealer authority to sell these vehicles. For the purpose of paragraph (11) and this paragraph, the term "new vehicle" shall mean a new vehicle which has never been registered or titled in Pennsylvania or any other state on which a tax for education imposed by the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, has not been paid prior to the sale.

(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 at wholesale or retail. 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 dealer 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 by the Department of Transportation pursuant to 75 Pa.C.S. § 1374(a) (relating to suspension of vehicle business reg-

istration 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, contract or agreement with a manufacturer, which gives the subject dealer selling rights for that line-make, has been finally terminated, but who continues to sell new vehicles.

(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 by him to the Commonwealth at the time and in the manner required by law.

(26) Any violation of this act.

Section 11. Administrative liability of employer, copartnership, association or corporation.

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

Section 12. Reinstatement.

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

(b) Revocation.—Unless ordered to do so by a court, the board shall not reinstate the license of a person that has been revoked and such person shall be required to apply for a license after a period of five years in accordance with section 13 if he desires to practice at any time after such revocation.

Section 13. Application for license.

(a) Contents of application; dealer's or broker's license.—Application for license as a dealer or broker 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 principal officers and directors.
 - (4) Locations in which the business is to be conducted if the dealer has more than one place of business.
 - (5) If new 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, broker or salesperson license which was revoked or suspended.
 - (8) If the applicant is a corporation or partnership, a statement showing whether any of the partners, employees, officers or directors have been refused a dealer's or salesperson's license or have been the holder of such license which was revoked or suspended.
 - (9) A statement by the applicant that he has met all facility requirements as noted herein and as required by regulation.
- (b) Contents of application; salesperson's license.—Application for license as a salesperson shall be made in writing to the board, signed by the applicant, setting forth the following:
- (1) The applicant's name and address.
 - (2) The period of time, if any, during which he has been engaged in the occupation of salesperson.
 - (3) The name and address of his last employer.
 - (4) The name and address of the dealer then employing him or into whose employ he is about to enter.
 - (5) The recommendation of his employer or prospective employer certifying that the applicant is honest, trustworthy and of good repute and recommending that a license be granted. In the case of an applicant who is himself a dealer, an officer of a corporation which is a dealer or a member of a partnership which is a dealer, the foregoing recommendation shall be made by another dealer, bank or sales finance company which has personal knowledge concerning the reputation and fitness of the applicant.
 - (6) 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 a salesperson's license which was revoked or suspended or the subject of disciplinary action by this board or that of any other jurisdiction.
 - (7) The application shall be made upon a form prepared by the board containing such other information as the board shall require through regulation.

(c) Application for license other than as a dealer, broker or salesperson.—Application for license other than as a dealer, broker or salesperson 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 background and his financial standing, all of which may be considered by the board in determining the fitness of said applicant to engage in the business for which he desires to be licensed.

Section 14. Refusal of license.

The board may refuse to issue a license if the applicant has committed any of the acts set forth as grounds for the suspension or revocation of a license. The board may also refuse to issue a license when it determines:

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

(2) That the applicant was previously a limited or general partner, stockholder, director or officer of a partnership or corporation whose license issued under the authority of this act was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

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

Section 15. Change of salesperson's license to indicate new employer.

If a person holding a currently valid license desires to be licensed to sell for 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. The new license shall be issued for the remainder of the period covered by the previous license. The fee for the issuance of such changed license shall be determined by regulation.

Section 16. Termination of employment or business.

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

(b) Dealer's or broker's license to be surrendered after termination of business.—Within ten days after termination of business activities, the dealer or broker shall surrender to the board its vehicle dealer's or broker's license.

Section 17. 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 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, No.476), known as the Motor Vehicle Sales Finance Act, in the conduct of sales of vehicles which have been repossessed by them.

Section 18. Limitations on establishing or relocating dealers.

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

(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 mobile home 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 car 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 19. Penalties.

(a) Unlicensed salespersons and brokers.—Whoever engages in the occupation of vehicle salesperson or who sells or acts as a sales agent or broker in connection with the sale of a vehicle or of a mobile home in a mobile home park, without being licensed and registered as required by this act or exempted from licensure 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 \$500. 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.

(b) Unlicensed manufacturers, etc.—Whoever engages in the business of vehicle dealer, manufacturer, factory branch, distributor, distributor branch, factory or distributor representative or wholesaler 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 \$500 or any higher amount equal to double the pecuniary gain derived from the offense. 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.

(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 Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 20. Civil actions for violations.

(a) **Action for damages.**—Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this act or any party to a franchise who is so injured in his business or property by a violation of a provision of this act relating to that franchise, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this act, may bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction.

(b) **Punitive damages.**—If any person engages in continued multiple violations of a provision or provisions of this act, the court may award punitive damages in addition to any other damages under this act.

(c) **Attorney's fees.**—In any action the prevailing party may be awarded a reasonable attorney's fee and costs at the court's discretion.

Section 21. Fees.

(a) **General rule.**—All fees required under the provisions of this act shall be fixed by the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. If the revenues generated by fees, fines and civil penalties imposed in accordance with the provisions of this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the Regulatory Review Act, such that the projected revenues will meet or exceed projected expenditures.

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

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

Section 22. Disposition of fees and fines.

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

Section 23. Vehicle shows and exhibitions.

(a) **Participation.**—Any licensed dealer or manufacturer may participate in any approved public vehicle show or exhibition which has been submitted by the show promoter and has been approved by the board.

(b) **Conditions for approval.**—Approval of a show or exhibition by the board shall require the show promoter to meet the following requirements:

(1) Submit a request for a show at least 60 days in advance of the show date with: name, address and telephone number of the show promoter, name and location of the show, types of vehicles to be displayed at the show, show dates and hours of operation.

(2) Submit a list of the maximum number of participating dealers and manufacturers and an approximate number of vehicles to be displayed. This shall not be construed to prohibit one dealer or manufacturer from promoting and participating in their own show with no other exhibitors.

(3) Submit the name, address and license number of each participating dealer and manufacturer known to be exhibiting in the show or exhibit at least 14 days prior to the date of the show opening.

(4) Submit a certified check or an equivalent bond, payable to the Commonwealth of Pennsylvania, equal to the number of participating dealers, at a rate per dealer or manufacturer to be determined by regulation. Said check or bond shall be forfeited to the Commonwealth, by the promoter, for noncompliance with this section.

(5) Sign a statement that the show promoter agrees to allow the board to review the list of exhibitors and warrants to the board that all Commonwealth exhibitors are properly licensed. If the board determines a dealer or manufacturer is not licensed, it shall note an exception to the list and the promoter shall exclude the dealer or manufacturer from the show.

(6) Submit within 14 days after show completion, a final list of the actual dealers and manufacturers participating in the show. The board shall then request a second certified check equivalent to the number of out-of-state dealers and manufacturers at the rate per out-of-state dealer or manufacturer to be determined by regulation.

(7) Upon satisfaction that all obligations of the show promoter, pursuant to this section, have been completed, the original check or bond shall be returned to the promoter.

(c) **Limitations on fees.**—No other fees shall be charged licensed vehicle dealers and manufacturers for participating in vehicle shows or exhibits by the board.

(d) **Shows or exhibits on Sundays.**—

(1) Vehicle shows or exhibits shall be permitted to be open on Sundays.

(2) Normal vehicle business practices shall be allowed on Sunday except that no final sales contract may be consummated on a Sunday.

Section 24. Savings provision.

This act shall not be deemed to repeal, suspend, modify or revoke any of the provisions of Title 75 of the Pennsylvania Consolidated Statutes (relating to vehicles) or of the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

Section 25. Reestablishment of agency.

This act, with respect to the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen, shall constitute the legislation required to reestablish an agency pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 26. Repeals.

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

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

Section 27. Expiration of terms of board members.

Persons who are members of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen December 31, 1983 shall serve on the board created under this act until their current terms expire or until their successors are duly appointed and qualified, but no longer than six months after the expiration of their terms.

Section 28. Existing rules and regulations.

Each rule and regulation of the board in effect on December 31, 1983, shall remain in effect after such date until repealed or amended by the board.

Section 29. Effective date.

This act shall take effect January 1, 1984.

APPROVED—The 22nd day of December, A. D. 1983.

DICK THORNBURGH