

# BOARD OF VEHICLES ACT

ACT 84 OF 1983  
amended through  
ACT 90 OF 2008

Commonwealth of Pennsylvania

State Board of  
Vehicle Manufacturers,  
Dealers and  
Salespersons



## **AN ACT**

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

**Compiler's Note:** See the preamble to Act 27 of 1996 in the appendix to this act for special provisions relating to public policy.



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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 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 used for the display or sale of vehicles.

**"Broker."**

- (1) Any person who, for any direct or indirect commission, compensation or other consideration, arranges or offers to arrange a transaction involving the sale of a new or used vehicle or establishes or offers to establish a plan or program involving the sale of a new or used vehicle and who is not:
  - (i) a licensed dealer or a licensed employee of a new or used vehicle dealer;
  - (ii) a licensed representative or a licensed employee of a manufacturer, factory branch or factory representative of new vehicles;
  - (iii) a licensed representative or a licensed employee of a distributor, distributor representative or distributor branch of new vehicles;
  - (iv) at any point in the transaction the owner of the vehicle involved in the transaction; or
  - (v) a licensed wholesale vehicle auction or public or retail vehicle auction.
- (2) For purposes of this definition, "direct or indirect commission, compensation or other consideration" shall not include any interest, finance charges and fees directly associated with loans originated by financial institutions.

**"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 trade-in and it is not to be delivered to the dealer until delivery of the new vehicle, the used vehicle may be reappraised at the time of delivery of the new vehicle if the dealer can establish that the vehicle has suffered damage or serious mechanical deterioration since the date of original valuation. The reappraisal value may determine the allowance made for the used vehicle.

**“Buying, selling or exchanging.”** Includes listing, offering, auctioning, advertising, representing or soliciting, offering or attempting to solicit or negotiate on behalf of another a sale, purchase or exchange or any similar or related activity.

**“Dealer.”** A person required to be licensed under this act who is engaged in the business of buying, selling or exchanging new or used vehicles or an interest in new or used vehicles, regardless of whether the vehicles are owned by that person. The term includes persons engaged in consignment sales for a seller, but does not include a person issued an identification number by the Department of Transportation, unless the board has also issued a dealer license to the person. Vehicle dealers shall be classified as one or more of the following:

- (1) A new vehicle dealer, who is a person engaged in the business of buying, selling or exchanging new and used vehicles, trailers or semitrailers for commission, compensation or other consideration, who holds a franchise with a manufacturer or distributor, giving the dealer selling rights for that particular line-make of new vehicles, trailers or semitrailers, or who is a distributor of new vehicles, trailers or semitrailers who holds a franchise with a manufacturer or distributor of vehicles, trailers and semitrailers.
- (2) A used vehicle dealer, who is a person engaged in the business of buying, selling or exchanging used vehicles, trailers or semitrailers for commission, compensation or other consideration. The term includes fleet owners who engage directly in the retail sale of its fleet vehicles.
- (3) A new manufactured housing dealer, who is a person engaged in the business of selling new manufactured housing and buying, selling or exchanging used manufactured housing or mobile homes for commission, compensation or other consideration and who holds a franchise with a manufacturer or distributor giving the dealer selling rights for a particular line-make of new manufactured housing.
- (4) A used manufactured housing or mobile home dealer, who is a person engaged in the business of buying, selling or exchanging used manufactured housing or mobile homes for commission, compensation or other consideration.

- (5) A new recreational vehicle dealer, who is a person engaged in the business of buying, selling or exchanging new and used recreational vehicles for commission, compensation or other consideration and who holds a franchise with a manufacturer or distributor giving the dealer selling rights for a particular line of new recreational vehicles.
- (6) A used recreational vehicle dealer, who is a person engaged in the business of buying, selling or exchanging used recreational vehicles for commission, compensation or other consideration. "Department." The Department of State acting through the Commissioner of Professional and Occupational Affairs.

**"Department."** The Department of State acting through the Commissioner of Professional and Occupational Affairs.

**"Distributor."** A person, resident or nonresident, who sells, distributes or services a manufacturer's products to or for dealers or maintains distributor representatives.

**"Distributor branch."** An established place of business operated, controlled or maintained by a distributor for the purpose of selling, distributing or servicing a manufacturer's products to or for dealers.

**"Distributor representative."** A representative employed by a distributor or distributor branch for the purpose of selling, distributing or servicing a manufacturer's products to or for dealers.

**"Due regard to the equities."** Treatment in enforcing an agreement that is fair and equitable to a dealer or distributor and that is not discriminatory compared to similarly situated dealers or distributors.

**"Engaging in the business."** Any activity which requires licensure under this act.

**"Established place of business."** A permanent, enclosed building as more specifically defined by regulation which is accessible and open at reasonable times and at which the business may be lawfully conducted in accordance with the terms of applicable building codes, zoning and other land-use regulatory ordinances.

**"Factory branch."** An established place of business operated, controlled or maintained, in whole or in part, by a manufacturer for the purpose of selling or servicing a manufacturer's products to or for distributors or dealers or for directing or supervising, in whole or part, its representatives.

**"Factory representative."** A representative employed by a manufacturer or by a 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 15 or more vehicles.

**"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 the franchise product or leases or rents the dealership or distributorship premises.

**"Just cause."** A material breach by a vehicle dealer or distributor, due to matters within the dealer's or distributor's control, of a reasonable and necessary provision of an agreement if the breach is not cured within a reasonable time after written notice of the breach has been received from the manufacturer or distributor.

**"Manufactured housing."** A structure manufactured after 1975, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term shall include any structure which meets all the requirements of this definition with respect to which the manufacturer voluntarily files a certification required by the United States Department of Housing and Urban Development.

**"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.

**"Material damage."** Damage sustained or incurred by a vehicle, whether repaired or replaced, which results in a vehicle being altered or reconditioned and the alteration or reconditioning is of a nature that a reasonable person would consider important in determining whether to make a retail purchase of a particular vehicle for a particular price. Replacement of tires, glass, bumpers and in-dash audio equipment, and only for recreational vehicles any appliances, furniture or fixtures, shall not be considered altering or reconditioning the vehicle if those components are replaced by identical manufacturer's original equipment.

**"Mobile home."** A structure manufactured before 1976, designed and used exclusively for living quarters or commercial purposes, but only incidentally operated on a highway.

**"Motor home."** A vehicle designed to provide temporary living quarters, built into an integral part of, or permanently attached to, a self-propelled vehicle chassis or van.

**"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 or an "all-terrain vehicle" or "ATV" as defined in 75 Pa.C.S. § 7702 (relating to definitions).

**"Net acquisition cost."** The cost to a dealer plus any charges by the manufacturer or distributor for the distribution, delivery and taxes, less all allowances paid or credited to the dealer by the manufacturer or distributor.

**"New vehicle."** A vehicle, regardless of mileage, which has never been registered or titled in this Commonwealth or any other state or jurisdiction and on which a tax imposed under Article II of 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 its sale.

**"Off-premise sale," "vehicle show" or "exhibition."** A sale, show or exhibition of one or more vehicle dealers, distributors, manufacturers or manufacturers' representatives who display, sell or attempt to sell vehicles, mobile homes, manufactured housing, or trailers, but not recreational vehicles, for a fixed and limited period of time held in the relevant market area of the participating dealers or distributors.

**"Person."** Any individual, corporation, partnership, association or other entity foreign or domestic.

**"Public or retail vehicle auction."** Any person required to be licensed under this act who for commission, compensation or other consideration is engaging in the business of providing retail vehicle auction services at an established place of business in which the auction acts as an agent as to vehicles which are sold to buyers, including individual retail buyers and the general public.

**"Recreational vehicle."** A vehicle primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own power or is mounted on or drawn by another vehicle. The term includes a travel trailer, recreational vehicle park trailer, slide-in camper, camping trailer and motor home.

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

**"Recreational vehicle show," "recreational vehicle off-premise sale," "recreational vehicle exhibition," or "recreational vehicle rally."** A sale, show, exhibition or rally, held by one or more recreational vehicle dealers, distributors, manufacturers or manufacturer's representatives who display, sell or attempt to sell recreational vehicles for a fixed and limited period of time, which shall not exceed ten days in a 30-day period, 20 days in a 90-day period, and 60 days in a 365-day period. Set-up and tear-down days and days when the events are not open shall be excluded from the calculation of the applicable time period.

**“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:

- (1) where a manufacturer is seeking to establish an additional new vehicle dealer, the relevant market area shall be in all instances the area within a radius of ten miles around the proposed site of the additional new vehicle dealer, except for cities of the first and second class which will be the area within a five-mile radius, around the proposed site of the additional new vehicle dealer; and
- (2) where a manufacturer is seeking to relocate an existing dealer, the relevant market area is the area within a radius of 20 miles around the proposed site of the relocating dealer or the area of responsibility defined in the franchise of the relocating dealer, whichever is greater.

This definition shall not apply to manufactured housing or recreational vehicle dealers or their 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 consideration, is employed by a dealer to buy, sell or exchange one or more new or used vehicles.

**“Trailer” or “semitrailer.”** A vehicle, other than a recreational vehicle, with a gross vehicle weight over 3,000 pounds which is designed to be towed by a vehicle.

**“Used vehicle.”** A vehicle on which title has been transferred from the person who first acquired it from the manufacturer or dealer in this Commonwealth or any other state or jurisdiction and on which a tax imposed under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, was paid prior to its sale.

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

**“Wholesale vehicle auction.”** Any person required to be licensed under this act who for commission, compensation or other consideration is engaging in the business of providing wholesale vehicle auction services at an established place of business. The auction 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. (2 amended Apr. 19, 1996, P.L.104, No.27)

**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, or his designee, 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 vehicle dealers who have been actively engaged as such for a period of five years immediately preceding their appointment.
  - (2) Three members shall be used vehicle dealers who have been actively engaged as such for a period of five years immediately preceding their appointment. One used vehicle dealer member beginning with the first vacancy for a used vehicle dealer after the effective date of this amendment shall also be an owner, partner or officer of a corporation or business which is licensed as a vehicle auction and which has been actively engaged as such for a period of five years immediately preceding the appointment.
  - (3) One shall be a manufactured housing or 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 vehicle 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 four years for members appointed after the effective date of this amendment 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. The maximum number of consecutive terms a member shall serve shall be two consecutive four-year terms. 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. A majority of the members of the board who have been appointed and confirmed shall constitute a quorum. Motions, questions and decisions of the board shall require the affirmative vote of a majority of a quorum for adoption. 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 or his designee, 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.

*(3 amended Apr. 19, 1996, P.L.104, No.27)*

#### **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, 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 of is 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.

*(4 amended Apr. 19, 1996, P.L.104, No.27)*

## **Section 5. License to engage in business.**

- (a) License required.
- (1) To promote the public safety and welfare, it shall be unlawful for any person to engage in the business as a salesperson, dealer, branch lot, wholesale vehicle auction, public or retail vehicle auction, manufacturer, factory branch, distributor, distributor branch, factory representative or distributor representative within this Commonwealth unless the person has secured a license as required under this act.
  - (2) A person, including, but not limited to, salespersons, shall not engage in the business for his own benefit or profit unless he is licensed in accordance with this act.
  - (3) A person shall not act as, offer to act as or hold himself out to be a broker in the advertising, buying or selling of any new or used vehicle.
- (b) Mobile home parks.
- (1) 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, except as provided for in paragraph (2).

- (2) Any real estate salesperson or broker licensed under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, may list for sale any preowned mobile home as defined by the Mobile Home Park Rights Act, whether or not the mobile home is located in a mobile home park, without being licensed under the provisions of this act. No mobile home park rule shall prevent the placement of a "for sale" sign on the home and on the property on which the home is located. Nothing in this paragraph shall authorize the listing for sale of preowned mobile homes at a sales lot by a licensed real estate salesperson or broker unless the salesperson or broker is also licensed under this act and has obtained a sales tax license from the Department of Revenue.
- (c) Salespersons to be employed. It shall be unlawful for any salesperson who has not been issued a salesperson's license number by the board to engage in any activity related to the buying, selling or exchanging of a vehicle for a commission, compensation or other consideration. Any sale must be conducted pursuant to and as part of the normal business activities of the dealer by a person who is a licensed salesperson of the dealer, unless that person is the dealer. The salesperson shall be presently employed by the currently licensed vehicle dealer for whom the salesperson is buying, selling or exchanging.
    - (1) 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.
    - (2) A licensed salesperson who is employed by a dealer who holds a dealer license in more than one category or at more than one facility may sell for each such dealer or at each such facility, provided that each facility has the same owners.
  - (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.
    - (1) Dealers engaged in the business of buying, selling or exchanging new and used vehicles, trailers or semitrailers shall maintain an established place of business with a salesroom devoted principally to the vehicle business,

and new vehicle dealers shall hold a franchise in writing with a manufacturer or distributor authorizing a new vehicle dealer to sell a particular line-make of vehicles from the address of the licensed facility.

- (i) A vehicle auction shall not be required to meet the facility requirements contained in this subsection.
  - (ii) A branch lot shall be a separately licensed location which meets the facility requirements defined herein and by the regulations as a main lot, unless used solely for the storage of vehicles.
- (2) Dealers engaged in the business of buying, selling or exchanging used vehicles, trailers or semitrailers shall maintain an established place of business with a salesroom devoted principally to the vehicle business which is a building or portion of a building where books and records are kept.
- (3) Dealers engaged in the business of buying, selling or exchanging new manufactured housing and used mobile homes or manufactured housing shall maintain a minimum usable display area of 5,000 square feet devoted principally to the mobile home or manufactured housing 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 manufactured housing of that particular line from the address of the licensed facility.
- (i) Dealers engaged in the business of buying, selling or exchanging new manufactured housing, in lieu of maintaining the minimum usable display area requirements of this section, shall be authorized to display, sell, list or offer for sale new manufactured housing if the new manufactured housing is located on-site in a mobile home park or new manufactured housing is on real property owned or rented by a person who through a written agreement with the dealer authorizes the dealer to locate the new manufactured housing on the real property and the dealer is authorized to display, sell, list or offer the new manufactured housing at the real property location. Such dealers must 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 such new manufactured housing.

- (ii) A display, sale, listing or offer for sale from a site or location as permitted by subparagraph (i) shall not require the issuance of a branch lot license.
- (4) Dealers engaged in the business of buying, selling or exchanging used mobile homes or manufactured housing shall maintain a place of business and a building, or a portion of a building, where books and records are kept and which is devoted principally to the mobile home or manufactured housing business. There shall be no minimum square footage display area requirement for a used mobile home or manufactured housing dealer.
  - (i) Dealers engaged in the business of buying, selling or exchanging new manufactured housing or used mobile homes or manufactured housing in addition to maintaining the business facility requirements of this section shall be authorized to display, sell, list or offer for sale used manufactured housing or mobile homes if the used manufactured housing or mobile homes are located on-site in a mobile home park or used manufactured housing or mobile homes are located on real property owned or rented by the person who owns the used manufactured housing or mobile home and the dealer possesses a written agreement with the person authorizing the dealer to sell, list or offer the used manufactured housing or mobile home on behalf of the person from the real property location.
  - (ii) A display, sale, listing or offer for sale from a site or location as permitted by subparagraph (i) shall not require the issuance of a branch lot license.
- (5) Dealers engaged in the business of buying, selling or exchanging new or used recreational vehicles shall maintain an established place of business with a minimum usable display area of 5,000 square feet devoted principally to the recreational vehicle business and hold a franchise in writing with a buyer, seller or manufacturer giving such person buying or selling rights for new recreational vehicles of that particular line from the address of the licensed facility.
- (f) Wholesale vehicle auction activities.
  - (1) Wholesale vehicle auctions in wholesale vehicle auction sales transactions shall permit only the following persons to sell vehicles at the auction: vehicle dealers licensed under this act or by any other state or jurisdiction, manufacturers, leasing companies, rental companies, financial institutions, insurance companies, charitable

nonprofit organizations; persons who sell vehicles owned by their business which are utilized to accomplish their main business purpose and who do not engage in any vehicle buying, sales or repair business; and fleet owners.

- (2) Only vehicle dealers licensed under this act or by any other state or jurisdiction shall be permitted to purchase vehicles at wholesale vehicle auctions. In addition to dealers licensed under this act or by any other state or jurisdiction, a vehicle business, except for repair and towing, transporter, service, financier or collector/ reposessor businesses, 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 without being licensed under this act shall be authorized at wholesale vehicle auctions only to buy, sell or exchange vehicles of the type for which the business is authorized to engage by the Department of Transportation or any other state or jurisdiction, provided that upon buying such vehicle, application for an appropriate certificate of title or certificate of salvage is made for the vehicle.
- (3) A dealer licensed under this act without possessing a wholesale vehicle auction or public or retail vehicle auction license shall be permitted to sell vehicles on consignment.
- (4) A vehicle auction shall only permit a person who is currently employed and licensed as a salesperson for a dealer who holds a license issued under this act or by any other state or jurisdiction to buy, sell or exchange vehicles at an auction on behalf of a dealer. This paragraph shall not apply to a salesperson who is buying, selling or exchanging vehicles at:
  - (i) wholesale vehicle auctions which are either fleet sales or manufacturer's sales; or
  - (ii) sales of vehicles for salvage, where the salesperson shall be permitted to buy, sell or exchange vehicles for no more than five dealers during the sale.
- (5) Any person who has had his license under this act or authority to engage as a dealer or salesperson in any other state or jurisdiction suspended or revoked shall not be authorized, while the license or authority is suspended or revoked, to be physically present at a wholesale vehicle auction during the auctioning of vehicles.

- (g) Public or retail vehicle auction activities.
- (1) Public or retail vehicle auctions shall not be limited as to who may commission them to sell vehicles or who may buy vehicles at public or retail auctions, provided that any buyer or seller is not engaging in the business as a dealer without a license or as any other person who would be required to be licensed under this act. Any person who has had his license under this act or authority to engage as a dealer or salesperson in any other state or jurisdiction suspended or revoked shall not be authorized, while the license or authority is suspended or revoked, to be physically present at a public or retail vehicle auction during the auctioning of vehicles. Public or retail vehicle auctions shall not be required to take title to the vehicles they offer for sale or have their auctioneers licensed as salespersons under this act. Public or retail vehicle auctions shall inquire of the seller of the vehicle and, if applicable, disclose to potential purchasers material information obtained from the seller regarding the vehicle being offered for sale as is required of all sellers under applicable Federal and Pennsylvania laws.
  - (2) Public or retail vehicle auctions shall ensure all purchasers at the vehicle auction:
    - (i) show proof of identification at the time of transfer of ownership;
    - (ii) sign the identified name to the transfer of ownership documents;
    - (iii) pay any applicable tax imposed under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, unless otherwise exempted by law; and
    - (iv) submit transfer of ownership documents to the Department of Transportation as required under 75 Pa.C.S. (relating to vehicles).
- (h) Notification of unlicensed persons. Vehicle auctions shall post a listing supplied by the board containing the names of all licensees who are currently revoked or suspended and persons who were penalized for unlicensed activity within the past year.

*(5 amended Apr. 19, 1996, P.L.104, No.27)*

**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 or distributor's representative, he must be presently employed with a

dealer, manufacturer or distributor which has a current license. The license holder shall comply with all requirements as set forth through regulation by the board.

*(6 amended Apr. 19, 1996, P.L.104, No.27)*

**Section 7. Enforcement.**

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.

*(7 amended Apr. 19, 1996, P.L.104, No.27)*

**Section 8. Protest hearing decision within 120 days unless waived by the parties.**

- (a) Franchise protest hearings to be decided within 120 days unless waived by the parties. Any franchise establishment, relocation, termination or failure to renew hearing based on a protest by a dealer or distributor of any action by a manufacturer or distributor 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 or distributor acted with good cause and, in the case of a protest of a proposed establishment or relocation of a dealer under section 27, 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, distributor 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 or distributor thereafter enters into a franchise establishing that new vehicle dealer, the manufacturer or distributor shall not be liable for damages based upon such establishment even if a court reverses the determination of the board.

- (b) Procedure. The procedure at the hearing shall be governed by 1 Pa. Code Pt. II (relating to general rules of administrative practice and procedure) with the following exceptions:
  - (1) In the event that the protest involves a termination or failure to renew the franchise of a new vehicle dealer, the dealer shall be permitted to review a manufacturer's or distributor's files related to that dealer upon written request.
  - (2) The board may order on its own initiative, or pursuant to a party's request, that part of the evidence for hearing be submitted to it in the form of depositions.
- (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.

*((c) added October 18, 2000, P.L. 577, No. 75)*

- (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. ((d) added October 18, 2000, P.L. 577, No. 75)

*(Present 8 added and former 8 renumbered 9 and amended Apr. 19, 1996, P.L. 104, No. 27)*

**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 of 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.

*(9 amended October 18, 2000, P.L.577, No.75)*

**Section 9.1. Industry reorganization (9.1 renumbered to 14 and amended April 19, 1996, P.L.104, No.27)**

**Section 10. Damage disclosure.**

- (a) Notice to dealer. Each manufacturer or distributor of new vehicles sold or transferred to a new vehicle dealer shall notify the new vehicle dealer in writing prior to delivery of the vehicle of any material damage to the vehicle which is known to the manufacturer or distributor which was sustained or incurred by the vehicle at any time after the manufacturing process is complete but prior to delivery of the vehicle to the dealer. A dealer may reject the delivery of a nonconforming vehicle under the provisions of 13 Pa.C.S. (relating to commercial code).
- (b) Notice to purchaser. When selling a new vehicle, each new vehicle dealer shall notify the purchaser in writing at the time of sale of any material damage sustained or incurred by the vehicle at any time after the manufacturing process is complete which is disclosed by the manufacturer to the new vehicle dealer.
- (c) Exemption. This section shall not apply to manufacturers and dealers of manufactured housing or to manufacturers, distributors or dealers of motorcycles.
- (d) Other statutes and decisions. Nothing in this section shall be construed to diminish any obligation to provide notice to the purchaser of a new vehicle which obligation is imposed by any other provision of law or by any judicial decision, including, but not limited to, the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

*(Present 10 added and former 10 renumbered 19 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 11. Mediation and arbitration.**

- (a) Mediation of disputes between licensees.
- (1) A dealer or distributor may not file a complaint, petition or protest or bring an action in a court of competent

jurisdiction against a manufacturer or distributor based on an alleged violation of this act or in a protest action under this act regarding an establishment, relocation or termination of a franchise agreement unless the dealer or distributor serves a demand for mediation upon the manufacturer or distributor before or contemporaneous with the filing of the complaint, petition or protest or the bringing of an action. A demand for mediation shall be in writing and served upon the manufacturer or distributor by certified mail at an address designated for that manufacturer or distributor within records of the dealer or distributor. The demand for mediation shall contain a brief statement of the dispute and the relief sought by the dealer or distributor filing the demand.

- (2) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be in this Commonwealth in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.
- (3) The service of a demand for mediation under paragraph (1) shall stay the time for the filing of any complaint, petition, protest or action under this act until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest or action is filed before the meeting, the board or court shall enter an order suspending the proceeding or action until the meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the board or court considers appropriate. A suspension order issued under this paragraph may be revoked upon motion of any party or upon motion of the board or the court.
- (4) The board shall encourage dealers, manufacturers and distributors to establish, maintain and administer a panel of mediators who have the character, ability and training to serve as mediators and who have knowledge of the vehicle industry.
- (5) Mandatory mediation under this section shall not be required of manufacturers, distributors or dealers of motorcycles.

- (b) Arbitration of disputes between licensees. After a dispute arises, the licensees may voluntarily agree to submit a dispute arising under this act pertaining to a complaint, petition, protest or action to binding or nonbinding arbitration. Any arbitration proceeding shall be voluntary, initiated by serving a written demand for arbitration on the other party, and shall be conducted under the provisions of 42 Pa.C.S. Ch. 73 Sub. ch. A (relating to statutory arbitration) and administered by representatives of dealers, manufacturers or distributors.
- (c) Immunity and presumption of good faith by mediators and arbitrators. A mediator or arbitrator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of his powers and duties under this section. Every act or omission of a mediator or arbitrator is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

*(Present 11 added and former 11 renumbered 20 with no change to text Apr. 19, 1996, P.L.104, No.27)*

**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. Before the addition of a line-make to the dealership facilities, the new vehicle dealer shall first request the consent of manufacturer or distributor if required by the franchise agreement. Any decision of the manufacturer or distributor with regard to dualing of two or more franchises shall be 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 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 shall be deemed to be approval of the request. 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.
- (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 be a violation of this paragraph in 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 the 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. 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 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 a 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 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 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.
- (12 amended October 18, 2000, P.L. 577, No. 75)*

**Section 13. Termination of franchises.**

- (a) Terminations. It shall be a violation of this act for any manufacturer or distributor, officer, agent or any representative whatsoever to unfairly, without due regard to the equities of said dealer and without just cause, terminate or fail to renew the franchise of any vehicle dealer; or being a manufacturer, to unfairly, without due regard to the equities of a distributor and

without just cause, terminate or fail to renew the franchise of any distributor. The manufacturer or distributor shall not meet its burden of proof to terminate or fail to renew the franchise if the acts of the manufacturer or distributor, in whole or in significant part, caused the dealer or distributor to be unable to comply substantially with the reasonable and material requirements of the franchise.

- (b) Mutual agreement of termination filing. 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 termination is filed with the board between the newly appointed distributor and such dealer.
- (c) Notification of termination. Not less than 60 days advance notice of such termination or failure to renew shall be given the dealer or distributor prior to the effective date thereof unless the nature or character of the reason for termination or failure to renew is such that the giving of such notice would not be in the public interest. A copy of the notice shall also be provided to the board.
  - (1) The 60-day notice period required by this subsection may be reduced to not less than 15 consecutive business days if the ground for termination or failure to renew is:
    - (i) insolvency of the dealer or filing of any petition by or against the dealer under any bankruptcy or receivership law;
    - (ii) failure of the dealer to conduct customary sales and service operations during business hours for seven consecutive business days, except in circumstances beyond the direct control of the dealer;
    - (iii) conviction of the dealer, or any owner thereof, of any felony which is punishable by imprisonment;
    - (iv) suspension or revocation of any license which the new vehicle dealer is required to have to operate a dealership; or
    - (v) based on a determination that there was a fraudulent misrepresentation by the dealer to the manufacturer or distributor which is material to the franchise.
  - (2) The 60-day notice period under this subsection is not required if the new vehicle dealer or distributor waives it voluntarily in writing.
- (d) Appeals. At any time before the effective date of such termination or failure to renew, the dealer or distributor 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 or failure to renew shall become effective until final determination of the issue by the board.

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

*(13 renumbered from 9 and amended and former 13 renumbered 22 and amended Apr. 19, 1996, P.L.104, No.27)*

#### **Section 14. Industry reorganization.**

- (a) Violation.

- (1) It shall be a violation of this act for a manufacturer or distributor directly or indirectly or through any officer, agent or employee to terminate or fail to renew a franchise of a new vehicle dealer in connection with:
  - (i) any change in ownership or control of all or any part of the manufacturer's or distributor's business whether by sale or transfer of assets, corporate stock or other equity interest; assignment; merger; consolidation; combination; joint venture; redemption; operation of law; or otherwise; or
  - (ii) the termination, suspension or cessation of all or any part of the manufacturer's or distributor's business operations except for a termination of a part of the manufacturer's or distributor's business operations throughout the United States that is not otherwise part of any change in ownership or control of the manufacturer's or distributor's business.
- (2) Paragraph (1) shall not apply if:
  - (i) a manufacturer or distributor offers a dealer a replacement franchise with reasonable terms or conditions; or
  - (ii) the manufacturer or distributor, within 90 days of the effective date of the termination or failure to renew, compensates the dealer in an amount at least equivalent to the higher of the fair market value of the franchise or portion of the franchise terminated or failed to be renewed on the date the

manufacturer or distributor announces the act that results in the termination or nonrenewal of the franchise or the date on which the notice of termination or nonrenewal of the franchise is issued.

- (3) If the manufacturer or distributor either or both:
- (i) authorizes the dealer to continue servicing and supplying parts, including warranty service and parts, for any goods or services marketed by the dealer pursuant to the franchise for a period of not less than five years from the effective date of the termination or failure to renew and continues to reimburse the dealer for warranty parts and service at the same prices and terms as franchised dealers for the manufacturer or distributor;
  - (ii) continues to supply the dealer with replacement parts for any goods or services marketed by the dealer pursuant to the franchise for a period of not less than five years from the effective date of the termination or failure to renew at the same prices and terms as franchised dealers for the manufacturer or distributor; and if a dealer chooses to continue either or both such parts and service operation under subparagraph (i) or (ii), the fair market value compensation of the franchise shall be reduced to reflect the value of continuing either or both such parts and service operation.
- (b) Acts affecting franchise. For purposes of subsection (a), the termination or discontinuation of a series, line, brand or class of new vehicle marketed by a manufacturer or distributor as a distinct series, line, brand or class shall be deemed to be the termination or nonrenewal of a franchise even if said series, line, brand or class of new vehicle is part of a franchise including other series, lines, brands or classes of new vehicle, provided that nothing in this subsection shall be construed as prohibiting a manufacturer or distributor from changing, adding or deleting models, specifications, model names, numbers or identifying marks or similar characteristics of the new vehicles it markets, provided that such change, addition or deletion does not result in the termination or discontinuance of a distinct series, line, brand or class of new vehicle.
- (c) Disputes. Any dispute arising between a manufacturer or distributor and a dealer under this section involving the determination of the fair market valuation of a franchise shall be determined by a court of competent jurisdiction and not by the board.

- (d) Exemption. This section shall not apply to motorcycle or recreational vehicle manufacturers, distributors or dealers.

*(14 renumbered from 9.1 and amended and former 14 renumbered 23 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 15. Succession to franchise ownership.**

- (a) Succession of ownership interest. Notwithstanding the terms of any franchise, any owner of a new vehicle dealership may appoint, by will or any other written instrument, a designated family member, the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner, or qualified manager, who has been employed at the dealership for at least two years, to succeed to the ownership interest of such owner in the new vehicle dealership.
- (b) Consent to succession on part of manufacturer or distributor. Notwithstanding the terms of any franchise, unless there exists good cause to withhold consent to succession on the part of the manufacturer or distributor, any designated family member or qualified manager of the franchise location in question of a retiring, deceased or incapacitated owner of a new vehicle dealership may succeed to the ownership interest of such owner under the existing franchise, provided:
  - (1) The designated family member or qualified manager furnishes written notice to the manufacturer or distributor of his or her intention to succeed to the ownership of the new vehicle dealership within 60 days after the owner's retirement, death or incapacity.
  - (2) The designated family member or qualified manager agrees to be bound by all then existing terms and conditions of the franchise.
- (c) Submission of personal and financial information. The manufacturer or distributor may request, and the designated family member or qualified manager shall promptly provide, such personal and financial information as is reasonably necessary to determine whether the succession will be honored.
- (d) Withholding consent to succession. If a manufacturer or distributor believes that good cause exists to withhold consent to the succession to the ownership of a new vehicle dealership by a designated family member or qualified manager of a retiring, deceased or incapacitated owner of a new vehicle dealership under the existing franchise, the manufacturer or distributor must serve written notice on the designated family member or

qualified manager and on the board of its refusal to honor the succession and intent to discontinue the existing franchise with the new vehicle dealer. Such notice shall be served no later than 60 days after the manufacturer's or distributor's receipt of:

- (1) notice of the designated family member's or qualified manager's intent to succeed to the ownership of the new vehicle dealer; or
  - (2) any personal or financial information requested by the manufacturer or distributor.
- (e) Notice requirements. The notice in subsection (d) shall state the specific grounds to withhold consent to honor the succession and the manufacturer's or distributor's intent to discontinue the franchise with the new vehicle dealer no sooner than 60 days after the date the notice is served. The reasons given for the disapproval or any explanation of those reasons by the manufacturer or distributor shall not subject the manufacturer or distributor to any civil liabilities unless the reasons given or explanations made are malicious and published with the sole intent to cause harm to the dealer or successor. If the notice of refusal and discontinuance is not timely and properly served, the franchise shall continue in effect, subject to termination only as otherwise provided under this act.
- (f) Protest requirements upon withholding of consent. Within 30 days after receipt of such notice or within 30 days after the end of any appeal procedure provided by the manufacturer or distributor, whichever is greater, the designated family member or qualified manager may file with the board to protest the withholding the consent to honor the succession. When a protest is filed, the board shall promptly notify the manufacturer or distributor that a timely protest has been filed and that such manufacturer or distributor shall not terminate or discontinue the existing franchise until the board has held a hearing and issued a written decision within 120 days of the filing of the protest nor thereafter, unless the board determines that there is good cause for not permitting the succession.
- (g) Conflicts. This act shall not preclude the owner of a new vehicle dealership from designating any person as his or her successor by written instrument filed with the manufacturer or distributor. In the event of any conflict between such a written instrument which has not been revoked by written notice from the owner to the manufacturer or distributor, and this section, the written instrument shall govern.

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

*(Present 15 added and former 15 renumbered 24 and amended Apr. 19, 1996, P.L.104, No.27)*

**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.
  - (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 convey the real property.
  - (ii) The manufacturer or distributor shall assume all of the duties, obligations and liabilities contained in the agreement 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.

*(Present 16 added and former 16 renumbered 25 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 17. Manufacturer or distributor repurchase of inventory and equipment.**

- (a) Return of property for repurchase. A new vehicle dealer shall return property, including, but not limited to, vehicle inventory, parts, equipment, tools and signs, as permitted under this section or as set forth in the franchise agreement, to the manufacturer or distributor within 90 days of the effective date of any termination or nonrenewal of a franchise or upon a termination or cessation of a part of a manufacturer's or distributor's business operations throughout the United States which is not part of any change in ownership, operation or control of all or any part of the manufacturer's or distributor's business under section 14. The manufacturer or distributor shall supply the new vehicle dealer with instructions on the method by which the new vehicle dealer must return the property to the manufacturer or distributor. Within 60 days of tender of the property to the manufacturer or distributor, the manufacturer or distributor, including medium and heavy-duty truck component and engine manufacturers or distributors who provide integral

parts of vehicles or provide major components by selling directly to dealers, shall repurchase from the new vehicle dealer and remit payment to the new vehicle dealer in accordance with their respective interest in:

- (1) Any new, undamaged and unsold vehicle inventory of the current model year or purchased from a manufacturer or distributor within 120 days prior to receipt of notice of termination or nonrenewal provided the vehicle has less than 500 miles registered on the odometer, not including mileage incurred in delivery from the manufacturer or in transporting the vehicle between dealers for sale, at the dealer's net acquisition cost, plus any cost to the dealer for returning the vehicle inventory to the manufacturer or distributor.
  - (2) All new, unused, undamaged parts listed in the current price catalog acquired from a manufacturer or distributor or a source approved or recommended by the manufacturer or distributor at the dealer price listed in the current parts catalog, less applicable allowances, plus 5% of the catalog price of the part for the cost of packing and returning the parts to the manufacturer or distributor. Reconditioned or core parts shall be valued at their core value, the price listed in the current parts catalog or the amount paid for expedited return of core parts, whichever is higher.
  - (3) Any special tools or equipment offered for sale during the three years preceding termination or nonrenewal and each trademark or trade name bearing signs which was recommended or required by the manufacturer or distributor at fair market value at the time the notice of termination or nonrenewal is given. In the event the inventory is subject to a security interest, the manufacturer may make payment jointly to the dealer and the holder of the security interest.
- (b) Failure to pay sums due. A manufacturer or distributor who fails to pay those sums due the dealer within the prescribed time or at such time as the dealer proffers good title prior to the prescribed time for payment is liable to the new vehicle dealer for:
- (1) the greater of dealer net acquisition cost, fair market value or current price of inventory;
  - (2) interest on the amount due, calculated at the rate applicable to a judgment of court; and
  - (3) reasonable attorney fees and costs.

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

*(Present 17 added and former 17 renumbered 26 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 18. Reimbursement of rental costs for dealer facility.**

- (a) Reimbursement of rental costs. In the event of a termination or nonrenewal under this act, except for termination or nonrenewal under section 14, the manufacturer or distributor shall, at the request and option of the new vehicle dealer, also pay to the new vehicle dealer:
  - (1) a sum equivalent to rent for the unexpired term of the lease or one year, whichever is less, or such longer term as provided in the franchise, if the new vehicle dealer is leasing the new vehicle dealership facilities from a lessor other than the manufacturer or distributor; or
  - (2) a sum equivalent to the reasonable rental value of the new vehicle dealership facilities for one year or until the facilities are leased or sold, whichever is less, if the new vehicle dealer owns the new vehicle dealership facilities.
- (b) Extent of requirement. The rental payment required under subsection (a) is only required to the extent that the facilities were used for activities under the franchise and only to the extent the facilities were not leased for unrelated purposes. If payment under subsection (a) is made, the manufacturer or distributor is entitled to possession and use of the new vehicle dealership facilities for the period rent is paid.
- (c) Exemption. This section shall not apply to motorcycle or recreational vehicle manufacturers, distributors or dealers.

*(Present 18 added and former 18 renumbered 27 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 19. Grounds for disciplinary proceedings.**

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.

- (39) Being a recreational vehicle dealer from another state or jurisdiction who, while buying, selling, titling, registering, financing or exchanging recreational vehicles in this Commonwealth, violates a Pennsylvania law or regulation or a law or regulation of the state or jurisdiction of licensure or the state or jurisdiction of domicile regarding the buying, selling, titling, registering, financing or exchanging recreational vehicles.

*(19 renumbered from 10 and amended and former 19 renumbered 28 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 20. 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.

*(20 renumbered from 11 and former 20 renumbered 29 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 21. 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 22 if he desires to resume operating as a licensee at any time after such revocation.

*(21 renumbered from 12 and amended and former 21 renumbered 30 with no change to text Apr. 19, 1996, P.L.104, No.27)*

**Section 22. Application for license.**

- (a) Dealer's or vehicle auction's license. Application for license as a dealer or vehicle auction 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 to which the license will be issued.

- (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 line-make or line-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, vehicle auction 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, vehicle auction's or salesperson's license or have been the holder of such a 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) 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. If the applicant is to be licensed for a dealer who is licensed in more than one category or at more than one location and the applicant desires to sell for each of the dealer's licensed entities, the name and address of the primary location and of each other entity shall be supplied.
  - (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 reasonable information as the board shall require.
- (c) Application for license other than as a dealer, vehicle auction or salesperson. Application for license other than as a dealer, vehicle auction 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.
- (d) Manufacturer's or distributor's license. Application for license as a manufacturer or distributor shall be made in writing to the board, signed by the applicant, setting forth or attaching the following:
- (1) Name of applicant and location of principal place of business for the license which is the subject of the application and the location of any other place of business within this Commonwealth.
  - (2) Name or style under which business is to be conducted and, if a corporation, the state of incorporation.
  - (3) The line-make or line-makes of new vehicles which are to be manufactured or distributed.
  - (4) A statement showing whether the applicant has previously applied for a license and the result of such application.
- (e) Change of ownership. A dealer or vehicle auction shall supply the board with information regarding any change in named owners. The information shall include a statement of the previous history, record and reputation in the business of the new owner. Where the same business name and address is to be retained, any

change in owners shall only require the licensee to inform the board of the change in owners but shall not require the licensee to submit to the entire license application process as set forth by this act or corresponding regulations.

*(22 renumbered from 13 and amended and former 22 renumbered 31 with no change to text Apr. 19, 1996, P.L.104, No.27)*

**Section 23. 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 or the board finds that the applicant continued to engage in an activity in violation of this act during the suspension or revocation period. 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.
- (4) That the applicant is a vehicle dealer, vehicle auction or salesperson who, having within five years prior to the application for or issuance of a license or while a current license is in force, pleaded guilty, entered a plea of nolo contendere or has been found guilty in a court of competent jurisdiction in Federal or in this or any other state jurisdiction of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to

defraud, bribery, odometer tampering or any other crime involving moral turpitude.

*(23 renumbered from 14 and amended and former 23 repealed Apr. 19, 1996, P.L.104, No.27)*

**Section 23.1 Vehicle shows, off-premise sales and exhibitions.**

*(23.1 renumbered to 32 and amended Apr. 19, 1996, P.L.104, No.27).*

**Section 23.2 Vehicle shows, off-premise sales and exhibitions on Sundays.**

*(23.2 renumbered to 33 and amended Apr. 19, 1996, P.L.104, No.27).*

**Section 24. Change of salesperson's license to indicate new employer.**

Whenever a licensed salesperson desires to change his employment from one licensed dealer to another, he shall notify the board in writing using the appropriate form, which is completed in its entirety and is accurate, no later than ten days after the date of change, pay the required fee and return the current license if not previously returned. The board shall issue a new license upon receipt of a complete and accurate salesperson's transfer application. In the interim at such time as the change in affiliation of the salesperson occurs, he shall maintain a copy of the notification sent to the board as his temporary license pending receipt of his new current license. This temporary transfer license shall expire at the end of 45 days from the date on the transfer application. It shall be the duty of the applicant to notify the board if a new license or other pertinent communication is not received from the board within 30 days of the submission of the transfer application. 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.

*(24 renumbered from 15 and amended and former 24 renumbered 34 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 25. 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 to the board.
- (b) Dealer's, branch lot or vehicle auction license to be surrendered after termination of business.-Within ten days after termination of business activities, the dealer, branch lot or vehicle auction shall surrender to the board all of its licenses and its salespersons' licenses issued by the board.

*(25 renumbered from 16 and amended and former 25 deleted by amendment Apr. 19, 1996, P.L.104, No.27)*

**Section 26. 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.
- (3) The sale, exchange or purchase by a person in one calendar year of fewer than five vehicles, except manufactured housing or mobile homes, on which sales tax has been paid at the purchase of the vehicle by that person. Where such a vehicle is authorized under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, to be transferred from the person who paid the sales tax to another without being subject to sales tax, such as, but not limited to, wife and husband transfers or disbursements from an estate to a beneficiary, the recipient of the vehicle shall be permitted to sell such vehicle without paying sales tax prior to his sale of the vehicle.
- (4) The sale, exchange or purchase of fewer than five manufactured housing or mobile homes by a person in one calendar year.

*(26 renumbered from 17 and amended and former 26 renumbered 35 with no change to text Apr. 19, 1996, P.L.104, No.27)*

**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.

- (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.
- (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 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 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 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 proposed additional 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 additional vehicle warranty service facility of 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 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 circumstance 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.

*(27 renumbered from 18 and former 27 renumbered 36 and amended Apr. 19, 1996, P.L.104, No.27)*

### **Section 27.1. Licensing cost.**

- (a) Licensing cost. Subject to the limitations established under subsection (c), a licensed dealer who has a contract with the Department of Transportation pursuant to 75 Pa. C.S. §7501 (relating to authorization of messenger and agent services) may charge the purchaser of a vehicle a licensing cost permissible under 75 Pa. C.S. Ch. 19 (relating to fees) and the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law and regulations promulgated thereunder, to include any of the following:
  - (1) The actual cost incurred by the dealer for fees associated with titling and registering the vehicle, including messenger fees, notary fees and electronic transaction fees.
  - (2) A documentary preparation charge for:
    - (i) Preparation and completion of documents required to register and license the vehicle under 75 Pa. C.S. (relating to vehicles).
    - (ii) Collection and submission of taxes payable by the purchaser.
    - (iii) Preparation of any other information associated with titling and registration of a vehicle.
- (b) Out-of-state title. The provisions of subsection (a) shall apply whether or not the purchaser intends to title and register the vehicle outside of this Commonwealth.
- (c) Limitations. The following limitations shall apply:
  - (1) A dealer which provides electronic transaction services for documents under subsection (a)(2) may impose a maximum charge of \$100 for calendar year 2008 and a maximum charge of \$120 for the calendar year 2009.
  - (2) A dealer which does not provide electronic transaction services for document preparation under subsection (a)(2) may impose a maximum charge of \$80 for calendar year 2008 and a maximum charge of \$100 for the calendar year 2009.
- (d) Adjustment. Beginning in January 2010, and annually thereafter, the licensing cost for documentary preparation shall be adjusted in accordance with the Federal Consumer Price Index For All Urban Consumers (CPI-U) for all items as published by the United States Department of Labor, Bureau of Labor Statistics, for the previous 12-month period on a cumulative basis. Any adjustment which is less than \$.50 shall be rounded down to the next lowest dollar amount and any adjustment which is \$.50 or greater shall be rounded up to the next highest dollar amount.

- (e) Fees. Licensing costs under this section shall not be considered fees for purposes of section 30 or 31.

**Section 28. Penalties.**

- (a) Criminal penalties for violation of this act. Whoever 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 licensee shall be subject to criminal prosecution under this subsection for violation of any provision of this act.
- (b) Criminal penalties for unlicensed activity. Whoever engages in the business of vehicle dealer, manufacturer, factory branch, distributor, distributor branch, 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).

*(28 renumbered from 19 and amended and former 28 renumbered 37 and amended Apr. 19, 1996, P.L.104, No. 27)*

**Section 29. Civil actions for violations.**

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 of 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.

*(29 renumbered from 20 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 30. 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).

*(30 renumbered from 21 with no change to text Apr. 19, 1996, P.L.104, No.27)*

**Section 31. 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.

*(31 renumbered from 22 with no change to text Apr. 19, 1996, P.L.104, No.27)*

**Section 32. Vehicle shows, off-premise sales and exhibitions.**

- (a) Participation. Any licensed dealer, distributor or manufacturer may participate in public vehicle shows, off-premise sales and exhibitions, provided that a dealer shall participate only in shows, off-premise sales and exhibitions held within the dealer's

relevant market area. A dealer shall be permitted to conduct a vehicle show or exhibition at its established place of business.

- (b) Application of section. The provisions of this section relating to "relevant market area" shall not apply to vehicle shows held as part of, and in conjunction with, the following:
  - (1) An event operated to benefit a charitable organization or group of organizations approved under section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)).
  - (2) A community or agricultural fair which receives funds from the Pennsylvania Fair Fund.
  - (3) An event pertaining to shows of recreational vehicles, manufactured housing or mobile homes.
- (c) Out-of-State new vehicle dealers. A new vehicle dealer, except a recreational vehicle dealer, licensed in another state or jurisdiction may participate with permission of its licensed manufacturer in industrywide public vehicle shows and exhibitions in which a total of 50 or more new vehicle dealers participate as exhibitors. Furthermore, the limitations relating to relevant market area contained in subsection (a) shall not be applicable to industrywide public vehicle shows and exhibitions in which, when open to the public, a total of 50 or more new vehicle dealers participate as exhibitors.
- (d) Section 32(d) of the act, renumbered and amended April 19, 1996 (P.L. 104, No. 27) is repealed.
- (e) Emergency vehicles. Licensed manufacturers of firefighting or emergency service vehicles shall be authorized to buy, sell or exchange such vehicles to governmental agencies or emergency service providers at vehicle shows, off-premise sales and exhibitions without possessing a dealer's license.
- (f) Applicability. This section shall not apply to recreational vehicle dealers.

*(32 renumbered from 23.1 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 32.1. Recreational vehicle shows, recreational vehicle off-premise sales, recreational vehicle exhibitions and recreational vehicle rallies.**

- (a) Participation. A recreational vehicle dealer, salesperson, distributor, manufacturer or manufacturer's representative licensed under this act may participate in a recreational vehicle shows, recreational vehicle off-premise sale, recreational vehicle exhibition or recreational vehicle rally. A recreational vehicle dealer shall be permitted to conduct a recreational vehicle

show, recreational vehicle off-premise sale, recreational vehicle exhibition or recreational vehicle rally at its established place of business.

- (b) Bond required. Any person acting as a recreational vehicle dealer in this Commonwealth shall have posted a bond payable to the Commonwealth in the amount of \$30,000, to ensure compliance with all Commonwealth laws and regulations. The bond shall be executed by a surety company authorized to transact business in this Commonwealth. The bond shall be security for any claim filed by an agency of the Commonwealth, for monies due, including unpaid taxes, fees, licenses, payment of a criminal penalty or monetary amount after the entry of judgment. The bond shall remain valid until canceled in writing by the issuer. This provision shall not limit the authority of any government agency or private individual to institute civil, criminal or disciplinary action against a person for a violation of a Commonwealth law or regulation. A recreational vehicle dealer who has a current bond in the amount of at least \$30,000 on file with the Department of Transportation shall not be required to post.
- (c) Out of state recreational vehicle dealers. A recreational vehicle dealer licensed in another state or jurisdiction or domiciled in another state or jurisdiction that does not require licensure shall register with the board on a form prescribed by the board before participating in this Commonwealth in a recreational vehicle show, recreational vehicle off-premise sale, recreational vehicle exhibition or recreational vehicle rally. The following apply:
  - (1) Registration shall include all of the following:
    - (i) Notification of the recreational vehicle dealer's intent to participate in this Commonwealth in a recreational vehicle show, recreational vehicle off-premise sale, recreational vehicle exhibition or recreational vehicle rally.
    - (ii) Agreement to comply with all Federal and State laws and regulations relating to the buying, selling, exchanging, titling, registration or financing of recreational vehicles.
    - (iii) Agreement by the out-of-state recreational vehicle dealer to submit to the jurisdiction of the Commonwealth for purposes of disciplinary action or imposition of a civil or criminal penalty or assessment under subsection (b) resulting from a violation under subparagraph (ii).
    - (iv) Evidence of the posting of a bond under subsection (b).

- (v) Payment of a participation fee.
  - (vi) A list of all individuals engaged as sales people for the out-of-state recreational vehicle dealer while operating in this Commonwealth.
- (2) If the board has taken action within the last five years to sanction an out-of-state recreational vehicle dealer, the board may:
- (i) Refuse to accept the registration and participation fee of the out-of-state recreational vehicle dealer permanently or for a fixed period; and
  - (ii) Order that the dealer be denied access to all recreational vehicle shows, recreational vehicle off-premise sales, recreational vehicle exhibitions and recreational vehicle rallies in this Commonwealth.
- (3) A recreational vehicle dealer license in another state or jurisdiction or domiciled in another state or jurisdiction that does not require licensure may participate in this Commonwealth in a recreational vehicle show, recreational vehicle off-premise sale, recreational vehicle exhibition or recreational vehicle rally under the circumstances set forth either in subparagraph (i) or (ii).
- (i) When the show, sale, exhibition or rally has less than a total of 50 recreational vehicle dealers participating with permission of the dealer's licensed manufacturer and meets all of the following requirements:
    - (A) A minimum of ten recreational vehicle dealers at the show are licensed in this Commonwealth.
    - (B) More than 50% of the participating recreational vehicle dealers are licensed in this Commonwealth.
    - (C) The state in which the dealer is licensed is contiguous to this Commonwealth and permits recreational vehicle dealers licensed in this Commonwealth to participate in vehicle shows in that state under conditions substantially equivalent to the conditions imposed upon dealers from that state to participate in recreational vehicle shows in this Commonwealth.
  - (ii) When the recreational vehicle show, sale, exhibition or rally opens to the public, it has a total of at least 50 recreational vehicle dealers from this Commonwealth and from another state participating with permission

of the dealer's licensed manufacturer and meets all of the following requirements:

- (A) The show, sale, exhibition or rally is trade-oriented and predominantly funded by recreational vehicle manufacturers.
  - (B) All of the participating dealers who are not licensed in this Commonwealth are from a state contiguous to this Commonwealth which permits recreational vehicle dealers licensed in this Commonwealth to participate in recreational vehicle shows in that state under conditions substantially equivalent to the conditions imposed upon dealers from that state to participate in recreational vehicle shows in this Commonwealth.
- (4) The board shall report a violation of Pennsylvania law or regulation to the state or jurisdiction in which the out-of-state recreational vehicle dealer is licensed or domiciled.
  - (5) Forms for out-of-state recreational vehicle dealers shall be published in the Pennsylvania bulletin and shall be maintained on the board's internet website.
  - (6) The board may accept registration information and payment electronically.

**Section 33. Off-premise sales, shows, exhibitions or rallies on Sundays.**

- (1) The following shall be permitted to be open on Sunday:
  - (i) Off-premise vehicle sales, shows and exhibitions.
  - (ii) Recreational vehicle shows, recreational vehicle off-premise sales, recreational vehicle exhibitions and recreational vehicle rallies.
- (2) Except as provided in paragraphs (3) and (4), normal vehicle business practices shall be allowed at off-premise sales, vehicle shows or exhibitions on Sunday except that no final sales contract may be consummated on a Sunday.
- (3) Normal vehicle business practices shall be allowed at recreational vehicle shows, recreational vehicle off-premise sales, recreational vehicle exhibitions and recreational vehicle rallies. Recreational vehicle dealers are permitted to consummate final sales contracts on Sundays

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

*(33 renumbered from 23.2 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 34. Savings provision.**

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

*(34 renumbered from 24 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 35. 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.

*(35 renumbered from 26 with no change to text Apr. 19, 1996, P.L.104, No.27)*

**Section 36. Expiration of terms of board members.**

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

*(36 renumbered from 27 and amended Apr. 19, 1996, P.L.104, No.27)*

**Section 37. Existing rules and regulations.**

Each rule and regulation of the board not inconsistent with this act shall remain in effect after such date until repealed or amended by the board.

*(37 renumbered from 28 and amended Apr. 19, 1996, P.L.104, No.27)*

## APPENDIX

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### Supplementary Provisions of Amendatory Statutes

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1996, APRIL 19, P.L.104, NO.27

#### **Preamble**

It is hereby declared to be the public policy of this Commonwealth to provide for fair and impartial regulation of those persons engaged in manufacturing, distributing or selling of vehicles. The provisions of this act which are applicable to such activities shall be administered in such a manner as will continue to promote fair dealing and honesty in the vehicle industry and among those engaged therein without unfair or unreasonable discrimination or undue preference or advantage. It is further declared to be the policy of this Commonwealth to protect the public interest in the purchase and trade of vehicles so as to insure protection against irresponsible vendors and dishonest or fraudulent sales practices and to assist, provide and secure a stable, efficient, enforceable and verifiable method for the distribution of vehicles to consumers in this Commonwealth.

**Compiler's Note:** Act 27 of 1996 amended, added or repealed sections 2, 3, 4, 5, 6, 7, 8, 9, 9.1, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 23.1, 23.2, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 of Act 84.







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