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Pa. Law Affords Franchise Protection to Auto, Truck Dealers

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Special to the Legal

Today's automotive industry is viewed by many as a seamless network of entities that manufacture, distribute and sell the new vehicles on display in dealership lots throughout the country. In fact, the network consists of multiple layers that begin with a domestic or foreign entity that manufactures new vehicles. These manufacturers either distribute the vehicles themselves or sell the vehicles to distributors, who in turn wholesale the vehicles to the dealers that sell the vehicles to consumers across the United States.

Since it is unlawful for new vehicle manufacturers or distributors to sell directly to the consuming public in Pennsylvania and most other states, there exists a large, independently owned dealer network that sells and services new vehicles on a retail level. Each dealer's ability to sell and service a particular line-make of vehicles, display the respective manufacturer's trademarks and engage in business as an authorized dealer is based upon a written dealer agreement with the manufacturer or its distributor.

Unbeknownst to many people outside of the industry, and because of the perceived inequity in bargaining power in negotiating the terms of such agreements, over the last three decades Pennsylvania has followed many other states in enacting laws



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designed to protect the rights of its automobile and truck dealers in their franchise relationships with new vehicle manufacturers and/or distributors.

These laws are contained within the Pennsylvania Vehicle Manufacturers, Dealers and Salespersons Act, 63 P.S. §818.1 et. seq., otherwise known as the Board of Vehicles Act, which also regulates the licensing and operations of all new and used vehicle dealers doing business in the commonwealth.

As courts have often noted, these dealer franchise laws are aimed at leveling the playing field between manufacturers, distributors and dealers and protecting the public interest. They transcend and govern any and all terms contained within the dealer agreements. Consequently, although the dealer agreements impose specific rights and obligations upon the respective parties, these rights and obligations may be

substantially modified by provisions contained within the Board of Vehicles Act.

For example, although the dealer agreements generally provide the manufacturer or distributor with the right to terminate a dealer for failing to meet specific operational, performance and/or financial criteria, including standards related to the sales and service of new vehicles, Pennsylvania law modifies the right of a vehicle manufacturer and distributor to terminate a dealer. Specifically, the Board of Vehicles Act provides that it is a violation of Pennsylvania law for any new vehicle manufacturer or distributor to unfairly, without due regard to the equities, and without just cause, terminate or fail to renew the franchise of a dealer. This statutory language has been interpreted to create a high threshold for termination and/or nonrenewal of any new vehicle dealer in Pennsylvania.

The Board of Vehicles Act further provides that certain notice requirements be met before termination. It also affords the dealer with the opportunity to file an administrative protest action before the Board of Vehicles of the Pennsylvania Department of State's Bureau of Professional and Occupational Affairs, which automatically stays termination pending adjudication of the issues presented in the protest. The manufacturer or distributor bears the burden of proof in establishing the "just cause" necessary for termination at the administrative protest

hearing conducted by the board.

In the event a dealer's franchise agreement is terminated or not renewed, the Board of Vehicles Act requires that the manufacturer or distributor repurchase certain new vehicle inventory, parts, equipment, tools and signage upon tender by the dealer. The law also contains a provision upon which a terminated dealer may request reimbursement of the rental cost or value of its dealership facility for a period of one year or for the unexpired term of the lease, whichever is less.

Additionally, the Board of Vehicles Act contains provisions that regulate when a new dealer can be established or relocated into the geographical market area of an existing same line-make dealer. In other words, and for example, the law provides limitations on where and on what basis a new Chevrolet dealer can be established or relocated in relation to the geographical location of an existing Chevrolet dealer. Similarly, the laws provide administrative protest rights to existing line-make dealers within the statutorily defined geographical market area, and stays the establishment or relocation of the new vehicle dealer pending adjudication of any protest filed by an existing dealer.

The Board of Vehicles Act also governs many other parts of the operational relationship between a new vehicle dealer and its manufacturer or distributor. For example, the law requires a manufacturer or distributor to reimburse the dealer for all warranty work and to pay the dealer a reasonable retail rate for all diagnostic work, repair service, parts and labor that are covered by the manufacturer's written warranty, within 30 days of submittal of a warranty claim.

The law also substantially limits the rights of the manufacturer or distributor to disallow and charge-back the dealer's warranty claims after they have been processed and paid within the aforementioned 30-day period. In the event a manufacturer or distributor attempts to disallow or charge-back warranty claims, the act provides the dealer with protest rights before the board

and stays collection of the disallowed claims pending adjudication of the protest.

Additionally, the act provides the dealer with protection from the imposition of unreasonable facility requirements by the manufacturer or distributor. In this regard, the law prohibits a manufacturer or distributor from requiring unreasonable expansion, construction or significant modification of a dealer's facilities or the construction of a separate facility for a specific line-make, if it is not justified by existing market and economic conditions. This statute is intended to provide dealers with rights to oppose the request of any manufacturer or distributor for a new and exclusive dealership facility if the existing economic conditions do not justify the expenditure.

The act also contains many other provisions that are intended to protect dealers' rights and investments, including making it unlawful for any manufacturer or distributor to do any of the following:

- Require or coerce any new dealer to refrain from participation in the management of an investment in or acquisition of any other line of new vehicles;
- Unfairly discriminate among its new dealers with respect to warranty service reimbursement;
- Unreasonably withhold consent to the sale, transfer or exchange of the dealer franchise to a qualified buyer capable of being licensed as a new vehicle dealer in Pennsylvania who meets the manufacturer's or distributor's reasonable requirements for appointment;
- Arbitrarily or capriciously withhold consent to a request for relocation of an existing dealer;
- Fail to timely respond in writing to a dealer's request for the sale, transfer or relocation of its dealership;
- Operate an unreasonable or unfair allocation system for the sale of new vehicles to its dealers;
- Vary the price charge to its dealers for new vehicles; and
- Require or coerce any new dealer to participate in an advertising campaign or

contest, or to purchase unnecessary or unreasonable quantities of promotional or training materials or showroom decorations.

The above-described list of prohibitions is not intended to be exhaustive, but rather is provided as an example of the types of regulations that presently exist under the act. These laws are continuously being reviewed, modified and expanded as the industry evolves. The most recent economic downturn and resulting turmoil in the automobile industry, including the bankruptcy filings of GM and Chrysler, have only increased the focus on these state law protections.

As noted above, and in an effort to provide an efficient and expedient process to adjudicate protests and claims presented pursuant to the Board of Vehicles Act, the Pennsylvania legislature created the Board of Vehicles to act as the administrative body for hearing claims presented under the act. The law provides for mandatory mediation in conjunction with the initial filing of most dealer protests before the board, and requires an adjudication of the dispute by the board within 120 days of the filing of a notice of unsuccessful mediation of the claim.

Although the board is not authorized to award monetary damages to an aggrieved party, the act does provide for alternative jurisdiction in any court of competent jurisdiction by any person or entity harmed by a violation of the Board of Vehicles Act.

Thus, the battleground for many disputes under the act can vary between the administrative process conducted by the Board of Vehicles or state or federal court depending upon whether particular jurisdictional requirements can be fulfilled and whether monetary damages are at issue. The choice of battleground is often strategic and should not be ignored by practitioners representing the respective parties in these types of dealer franchise disputes. •