

DEALERSHIP AND FRANCHISE ALERT

MAJOR REVISION OF BOARD OF VEHICLES ACT UNDERWAY

The Pennsylvania Senate recently concurred in the House amendments to S.B. 921 (“the Bill”), which went to Governor Rendell on August 28, who is expected to sign it and has until September 6 to do so. If signed, the Bill will result in a major revisions to Board of Vehicles Act (“the Act”), 63 Pa.Stat. §§ 818.1-818.37 (and the related regulations, 49 Pa.Code. §§ 19.1-19.38). The Act is the primary piece of legislation governing vehicle manufacturers, dealers, and salespersons in Pennsylvania. In a number of ways, the Bill modifies the conditions imposed on the franchise relationship between new vehicle dealers and manufacturers to make it easier for dealers to add additional lines of vehicles and to require manufacturers to buy back more vehicles upon franchise termination.

The full text of the Bill, which would become effective 60 days after signing, is available on the internet:

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2009&sessInd=0&billBody=S&billTyp=B&billNbr=0921&pn=1266>

Currently, Sections 11, 12 and 17 of the Act (63 Pa.Stat. §§ 818.11, 818.12, and 818.17) establish conditions on the franchise relationship between vehicle manufacturers and dealers in Pennsylvania. Section 11(a) of the Act requires mandatory mediation before a dealer may file a complaint with the State Board of Vehicle Manufacturers, Dealers, and Salespersons (“the Board”) against a manufacturer regarding the establishment, relocation or termination of a franchise agreement.

The Bill adds a new exception to the Section 11(a) mediation requirement, such that dealer will not be required to enter into mediation prior to filing a complaint with the Board against a manufacturer for denying the dealers’ request to add an additional brand of vehicles to the dealership (also known as “dualing”). The Act presently contains no definition of “dualing”. The Bill would add definitions to the Act for the terms “dual” or “dualing”; defining them to mean “having two or more line-makes of new vehicles located in the same dealership facilities.”

Section 12(a)(6) of the Act currently prohibits a manufacturer from denying a dealer’s request to dual a franchise if the dealer maintains a reasonable line of credit for each brand and the dealer remains in compliance with the reasonable facility requirements of the manufacturer. Reasonable facility requirements do not include building or maintaining brand exclusive facilities when that would be unreasonable considering economic conditions. Dealers are required to request consent from the manufacturer to dual a franchise, and the manufacturer must respond within 60 days. A manufacturer’s failure to respond within that time is deemed an approval.

The Bill would reduce the manufacturer’s required response time to a dualing request from 60 days to 45 days. If a dualing request is denied by a manufacturer, the Bill would allow the dealer

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to immediately file a complaint with the Board, and require the Board to render a determination within 90 days. The Bill would put the burden of proof on the manufacturer to show that the dualing request is unreasonable.

Section 12(a)(8) of the Act currently prohibits manufacturers from requiring dealers to expand facilities without assuring a reasonable supply of new vehicles to justify such an expansion considering economic conditions, and prohibits requiring separate brand facilities if economic conditions do not clearly justify the separate facility.

The Bill would add a new paragraph, 12(a)(8.1), prohibiting a manufacturer from requiring a dealer to expand or modify facilities if it is unreasonable considering the market and economic conditions. This paragraph of the Bill would also prohibit requiring separate facilities for each brand if the market and economic conditions do not clearly justify the separate facility.

Section 12(b)(4) of the Act currently prohibits manufacturers from “arbitrarily and capriciously” denying dealer requests to relocate a dealership. The Bill would change the Section 12(b)(4) standard to prohibit the manufacturer from “unreasonably” denying the request.

Section 17(a)(1) of the Act currently requires manufacturers to repurchase new vehicle inventory within 60 days of return by the dealer if a franchise is terminated. The Act currently defines new vehicle inventory as vehicles of the current model year, or vehicles purchased from the manufacturer within 120 days prior to termination.

The Bill would amend Section 17(a)(1) to provide that, in the event of a franchise termination, the manufacturer is required, within 60 days of return, to repurchase from the dealer new vehicles acquired from either the manufacturer or another dealer within 18 months of the termination date. For new heavy duty trucks (gross vehicle weight rating of at least 10,001 pounds), the Bill would require the manufacturer to repurchase current and two prior model years’ inventory.

Though much of the focus recently has been on the power of Bankruptcy Courts to allow terminations and revisions of dealership agreements that otherwise would be prohibited or limited by state law, these amendments make clear that, despite the immediate impact of the bankruptcies, state laws will continue to have a significant role in shaping and governing the relationship between vehicle manufacturers and dealers.

The Dealership and Franchise Law Alert is intended to keep readers current on matters affecting dealership and franchise law issues and is not intended to be legal advice. For information or assistance regarding any of the information noted above, please contact Loudon L. Campbell at 717. 237.028 or lcampbell@eckertseamans.com, Thomas J. Sweeney Jr. at 412.566.6968 or tsweeney@eckertseamans.com, Gregory H. Teufel at 412.566.5977 or gteufel@eckertseamans.com or any other attorney with whom you have been working.