

**CHAPTER 19. STATE BOARD OF VEHICLE
MANUFACTURERS, DEALERS AND SALESPERSONS**

GENERAL PROVISIONS

- Sec.
19.1. Legislative findings and purposes.
19.2. Definitions.
19.3. Applicability of general rules.
19.4. Fees.

SALESPERSON'S LICENSE

- 19.11. License.
19.12. Application for license.
19.13. [Reserved].
19.14. Display of salesperson's licenses.
19.15. [Reserved].
19.16. [Reserved].

DEALERSHIP LICENSE

- 19.17. Separate business identity for brokers and dealers.
19.17a. Branch lots.
19.18. Established place of business for dealers.
19.18a. Consignment sales.

AUCTION LICENSE

- 19.19. Standards of licensure for retail or public auction.
19.20. Standards of licensure for wholesale auction.

POWERS AND DUTIES OF THE BOARD

- 19.21. [Reserved].
19.22. Investigation.
19.23. Vehicle shows, off-premise sales and exhibitions.

PROTEST PROCEEDINGS

- 19.31. Filing of papers.
19.32. Initiation of a protest.
19.33. Intervention.
19.34. Time for adjudication.
19.35. Subsequent pleadings.
19.36. Prehearing statements.
19.37. Prehearing conference.
19.38. Posthearing briefs.

Authority

The provisions of this Chapter 19 issued under the Motor Vehicle Salesman's License Act (63 P. S. §§ 801—816) (Repealed), unless otherwise noted.

Source

The provisions of this Chapter 19 adopted July 18, 1968, unless otherwise noted.

GENERAL PROVISIONS**§ 19.1. Legislative findings and purposes.**

The General Assembly of this Commonwealth finds and declares that the sale of new and used motor vehicles in the Commonwealth vitally affects the general economy of the Commonwealth, the public interest and public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to license manufacturers, dealers and salespersons of new and used motor vehicles doing business in the Commonwealth, in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this Commonwealth.

Source

The provisions of this § 19.1 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403.

Notes of Decisions*General Comment*

This regulation does not refer to the sale of five vehicles by any individual; rather, it sets forth the legislative purpose of the Board of Vehicles Act (63 P. S. § 818.5). *Maggiano v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 659 A.2d 1071 (Pa. Cmwlth. 1995).

Standing

Intervening Association had standing to appeal a decision by the State Board of Manufacturers, Dealers and Salespersons, which deemed the application for a broker's license by a developer of an automobile purchasing program to be withdrawn for lack of jurisdiction, because the Association was able to show that the primary purpose of the Board of Vehicles Act was to protect the general economy of the Commonwealth. *Pennsylvania Automotive Association v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 550 A.2d 1041 (Pa. Cmwlth. 1989).

§ 19.2. Definitions.

In addition to the terms defined in section 2 of the act (63 P. S. § 818.2), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Board of Vehicles Act (63 P. S. § 818.1—818.37).

Board—The State Board of Vehicle Manufacturers, Dealers and Salespersons.

Dealer's interest in vehicles—A dealer's interest in vehicles, as the term is used in section 2 of the act, does not include the lease of a vehicle.

Engaging in the occupation of vehicle salesperson—The display, demonstration, offer for sale or retail sale of any vehicle not owned by that person.

Authority

The provisions of this § 19.2 amended under section 4 of the Board of Vehicles Act (63 P. S. § 818.4).

Source

The provisions of this § 19.2 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial pages (201776) and (271697) to (271698).

§ 19.3. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (General Rules), is applicable to the activities of and proceedings before the Board. Sections 19.31—19.38 (relating to protest proceedings) supplement the General Rules and apply solely to proceedings under sections 8(d), 13 and 27 of the act (63 P. S. §§ 818.8(d), 818.13 and 818.27).

Authority

The provisions of this § 19.3 amended under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.3 adopted September 12, 1975, effective September 13, 1975, 5 Pa.B. 2396; amended February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, effective February 4, 2006, 36 Pa.B. 715. Immediately preceding text appears at serial page (290075).

§ 19.4. Fees.

The following is the schedule of fees charged by the Board:

Salesperson license application	\$ 25
Factory representative or distributor representative license application ..	\$ 25
Manufacturer license application	\$ 30
Factory or distributor branch license application	\$ 30
Distributor license application	\$ 30
Dealer license application	\$ 65
Auction license application	\$ 65
Dealer branch lot license application	\$ 65
Salesperson change of employer transfer application	\$ 25
Business name or post office address change	\$ 30
Business physical location change	\$ 60
Verification of licensure	\$ 15
Reinspection after failure	\$ 45
Certification of license history	\$ 25
Biennial renewal—salesperson license	\$ 90
Biennial renewal—vehicle representative license	\$ 90
Biennial renewal—manufacturer license	\$250
Biennial renewal—manufacturer branch license	\$175
Biennial renewal—distributor license	\$175
Biennial renewal—dealer license	\$175
Biennial renewal—auction license	\$175
Biennial renewal—dealer branch license	\$175

Authority

The provisions of this § 19.4 amended under sections 4 and 30(b) of the Board of Vehicles Act (63 P. S. §§ 818.4 and 818.30(b)).

Source

The provisions of this § 19.4 adopted May 19, 1989, effective May 20, 1989, 19 Pa.B. 2162; amended December 15, 2000, effective December 16, 2000, 30 Pa.B. 6427; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485; amended June 8, 2007, effective June 9, 2007, 37 Pa.B. 2606. Immediately preceding text appears at serial pages (316943) to (316944).

SALESPERSON'S LICENSE**§ 19.11. License.**

It is unlawful for a person, except as provided in this chapter, to engage in the occupation of salesperson within this Commonwealth unless the person has secured a license as required under the act.

Authority

The provisions of this § 19.11 amended under section 4 of the Board of Vehicles Act (63 P. S. § 818.4).

Source

The provisions of this § 19.11 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial page (271699).

§ 19.12. Application for license.

(a) Application for license as a salesperson shall be made in writing to the Board, signed by the applicant, designating the business name and address of the dealer then employing the applicant or into whose employ the applicant is then about to enter. Applications shall be made upon a form of application prepared by the Board which shall include the recommendation of his employer or prospective employer certifying that the applicant is honest, trustworthy, truthful 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, a representative of a bank or sales finance company which has personal knowledge concerning the reputation and fitness of the applicant, shall complete affidavit No. 4 on transfer form or No. 18 on the original application. The form of application shall contain other information, as the Board requires.

(b) A person, resident or nonresident, who, in whole or in part, sells, distributes or exchanges vehicles to dealers within this Commonwealth, is required to be licensed in this Commonwealth as a distributor or dealer.

Authority

The provisions of this § 19.12 amended under section 5 of the Motor Vehicle Salesman's License Act (63 P. S. § 805(6)) (Repealed); amended under section 4 of the Board of Vehicles Act (63 P. S. § 818.4).

Source

The provisions of this § 19.12 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; amended October 29, 1982, effective October 30, 1982, 12 Pa.B. 3820; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial pages (271699) to (271700).

§ 19.13. [Reserved].**Source**

The provisions of this § 19.13 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; reserved May 19, 1989, effective May 20, 1989, 19 Pa.B. 2162. Immediately preceding text appears at serial page (105335).

§ 19.14. Display of salesperson's licenses.

Dealers shall hold and properly display the display portion of the licenses of all salespersons in his employ.

Source

The provisions of this § 19.14 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403.

§ 19.15. [Reserved].**Source**

The provisions of this § 19.15 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; reserved July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial pages (271700) to (271701).

§ 19.16. [Reserved].**Source**

The provisions of this § 19.16 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; reserved July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial pages (271701) and (201781).

DEALERSHIP LICENSE**§ 19.17. Separate business identity for dealers.**

Every licensed dealership shall have a business identity separate from other businesses owned or operated by the dealer.

Authority

The provisions of this § 19.17 issued under section 4(9) of the Board of Vehicles Act (63 P. S. § 818.4(9)).

Source

The provisions of this § 19.17 adopted March 7, 1986, effective March 8, 1986, 16 Pa.B. 673; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial page (201781).

Cross References

This section cited in 49 Pa. Code § 43b.9 (relating to schedule of civil penalties—vehicle manufacturers, dealers and salespersons).

§ 19.17a. Branch lots.

(a) *Facility.* Unless otherwise exempted by the act or this chapter, any location where a licensed vehicle dealer displays or offers vehicles for sale shall be licensed and comply with the facilities requirements set forth in the act and § 19.18 (relating to established place of business for dealers).

(b) *Storage of vehicles.* The storage of vehicles by a licensed vehicle dealer at an unlicensed location will not be considered to be the display or offer for sale of vehicles at that location if:

(1) The lot is used solely for the storage of vehicles.

(2) The lot is identified by a sign with the dealership name and a designation that the lot is for “storage only.” The area may not otherwise be identified.

(3) A salesperson is present at the lot only as necessary to repair, recondition, inspect or move any of the vehicles.

(4) A salesperson present at the unlicensed location does not engage in any demonstration or discussion of product features of the vehicles and does not discuss any terms of sale.

(5) The public is not permitted access to any of the vehicles at the lot and the vehicles are not capable of being entered or operated (other than by criminal acts).

(6) A sign or other marking at the lot or on any of the vehicles at the lot (except for a Federally-mandated manufacturer’s price sticker) does not indicate that any of the vehicles at the lot are available for sale at any other location.

(7) Literature, such as business cards or brochures, is not available for potential customers to remove from the lot.

(8) The dealer has provided a potential customer at the lot with no means, such as telephone, e-mail or Internet website, to negotiate the sale of, to obtain additional information concerning, or to otherwise discuss the vehicles at the unlicensed lot or other vehicles available for sale by the dealer.

(c) *Single vehicle display.*

(1) The placement of a single vehicle before the public will not be considered the buying, selling or exchanging of the vehicle, as defined in section 2 of the act (63 P. S. § 818.2), if:

- (i) The placement is by a vehicle dealer licensed in this Commonwealth.
- (ii) No more than one vehicle is placed at the location.
- (iii) A salesperson present at the location does not discuss the features of the vehicle or other vehicles handled by the dealership and does not negotiate or conclude the sale of the vehicle or another vehicle of the dealer.
- (iv) There is no sales office at the location.
- (v) There are no sales forms present at the location.
- (vi) The dealer has secured the vehicle so that it is not capable of being entered or operated by potential customers or others (other than by criminal acts).
- (vii) The location is not at the licensed premises of any vehicle dealer or vehicle auction.
- (viii) A sign is posted that identifies the vehicle as for display only and not for sale at that location.

(2) This subsection applies to the placement of automobiles, light trucks and motorcycles, but does not apply to the placement of recreational vehicles, mobile homes, manufactured housing, and other vehicles not identified in this paragraph.

Authority

The provisions of this § 19.17a issued under sections 2, 4(4) and (9) and 5(e) of the Board of Vehicles Act (63 P. S. §§ 818.2, 818.4(4) and (9) and 818.5(e)).

Source

The provisions of this § 19.17a adopted August 27, 2004, effective August 28, 2004, 34 Pa.B. 4689.

§ 19.18. Established place of business for dealers.

A licensed dealer shall maintain an established place of business that meets the following criteria:

- (1) *Permanent enclosed building.* The dealer shall own or rent a permanent enclosed building for use by the dealership. A permanent enclosed building may consist of an office trailer with skirting and a permanent foundation. The dealership must be separated from adjoining businesses and residences by partitions or walls.
- (2) *Private office.* The dealership must have a private office, separate from display areas and repair and servicing facilities, that has space for the storage of books and records.
- (3) *Display area.* The dealership must have a display area—whether indoors, outdoors or partly indoors and partly outdoors—where the public is permitted and invited in the regular course of business to inspect or test drive the vehicles that are being offered for sale, purchase or exchange by the deal-

ership. The display area may not include areas of the dealership premises on which are placed vehicles that are wrecked or damaged, that are awaiting reconditioning or preparation for sale, purchase or exchange, that are being serviced or repaired, that are part of general inventory, or that are otherwise not being offered for sale, purchase or exchange to the public. The display area shall meet the following requirements:

(i) *Size.*

(A) The display area of a dealership that buys, sells or exchanges vehicles must be large enough for the display of at least five vehicles—with doors opened—of the kind that are bought, sold or exchanged by the dealership. The display area of a dealership that buys, sells or exchanges recreational vehicles, manufactured housing and mobile homes must have a display area of at least 5,000 square feet, unless exempted by section 5(e)(3) or (4) of the act (63 P. S. § 815.5(e)(3) and (4)).

(B) The minimum size display area requirements of this paragraph do not apply to a licensed vehicle dealer that sells only new firefighting or emergency service vehicles.

(ii) *Grading and surfacing.* An outdoor display area must be properly graded. The outdoor display area of a dealership that buys, sells or exchanges vehicles must be surfaced with concrete, asphalt, slag, brick, stone, aggregate, gravel, cinder or similar material. A dealership that otherwise complies with this paragraph may display up to five vehicles without regard for the grading or surfacing where those vehicles are displayed, so long as customers are not permitted to be present in the nonconforming area. A dealer may demonstrate that customers are not permitted to be present in the nonconforming area by posting a no-trespassing or similar sign, erecting a barrier or taking another reasonable precaution.

(iii) *Separation from adjacent parking areas.* An outdoor display area must be separated from the parking areas of adjacent businesses and residences by grass strips, ropes and pennants, painted lines or some other conspicuous means of separation.

(iv) *Lighting.* If a dealership with an outdoor display area intends to be open during evening hours, the display area must be lighted adequately.

(4) *Repairs and ancillary services.* A dealership that buys, sells or exchanges mobile homes or manufactured housing must do one of the following:

(i) Provide transportation, installation and repair services to its customers.

(ii) Make available to its customers a list of persons or companies who provide transportation, installation and repair services.

(5) *Telephone.* The dealership must have a single business line telephone, located within the permanent enclosed building, that is used for the dealership. The telephone number must be listed under the dealership's licensed name.

(6) *Sign.* The dealership must exhibit a sign, either permanently affixed to the building or erected in the outdoor display area, that shows the licensed name of the dealership and that is visible to the public.

(7) *Land-use ordinances.* The dealership must be in full compliance with applicable building codes, zoning ordinances and other land-use ordinances.

(8) *Fire-safety requirements.* A dealership must possess a certificate of occupancy issued by a building code official in accordance with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

(9) *Posting of business hours.* The dealership must post its regular business hours in a conspicuous place for the visiting public.

Authority

The provisions of this § 19.18 issued under sections 2 and 5(e) of the Board of Vehicles Act (63 P. S. §§ 818.2 and 818.5(e)); amended under section 4(9) of the Board of Vehicles Act (63 P. S. § 818.4(9)).

Source

The provisions of this § 19.18 adopted March 7, 1986, effective March 8, 1986, 16 Pa.B. 673; amended June 15, 1990, effective June 16, 1990, 20 Pa.B. 3158; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485; amended July 2, 2004, effective July 3, 2004, 34 Pa.B. 3410; amended December 3, 2004, effective December 4, 2004, 34 Pa.B. 6407. Immediately preceding text appears at serial pages (305545) to (305547).

Cross References

This section cited in 49 Pa. Code § 19.17a (relating to branch lots); and 49 Pa. Code § 43b.9 (relating to schedule of civil penalties—vehicle manufacturers, dealers and salesperson).

§ 19.18a. Consignment sales.

(a) A licensed dealer is permitted to engage in consignment sales without being licensed as a wholesale vehicle auction or public or retail vehicle auction, as defined in section 2 of the act (63 P. S. § 818.2), if the dealer meets the requirements of this section.

(b) The dealer shall maintain the following documents at the lot where the vehicle is displayed:

(1) A copy of a separate written consignment agreement with the consignor for each vehicle. The written consignment agreement shall contain the following information:

- (i) The name and signature of the consignor.
- (ii) The make, model, year, vehicle identification number, and license plate number of the vehicle.
- (iii) The length of the consignment period.
- (iv) The terms of sale, including the minimum selling price, if any, and the amount of or formula for determining the dealer's commission.
- (v) The terms of insurance coverage during the period of consignment, including the name, address and telephone number of the consignor's insurance agent, if any.

- (vi) The express identification of any warranties extended by the consignor.
- (vii) The name and address or telephone number of all current lien holders, together with the account number for each lien.
- (viii) Any material facts relative to the vehicle, including accident history known to the seller, vehicle condition and odometer disclosure.
 - (2) A copy of the current registration card.
 - (3) A copy of the title or a print-out of an electronic lien verification.
- (c) The dealer shall have the title of the vehicle assigned from the consignor to the dealer prior to applying for title in the name of the buyer.
- (d) Whenever a vehicle is displayed for sale on consignment, the dealer shall disclose in writing in at least 20-point bold type on or attached to the vehicle that the vehicle is held on consignment and is not owned by the dealer.
- (e) A dealer may not deliver a vehicle on consignment sale without having all title, lien and registration documents signed by the buyer or consignor, or both, as appropriate.

Authority

The provisions of this § 19.18a issued under sections 4(9) and 5(f)(3) of the Board of Vehicles Act (63 P. S. §§ 818.4(9) and 818.5(f)(3)).

Source

The provisions of this § 19.18a adopted August 27, 2004, effective August 28, 2004, 34 Pa.B. 4691.

§ 19.19. Standards of licensure for retail or public auction.

- (a) *Auction activities.*
 - (1) Every public or retail auction shall have a business identity separate from other businesses owned or operated by the public or retail auction.
 - (2) A public or retail auction may not conduct auction activities other than from its established place of business. A retail or public auction may auction only those vehicles that are physically located at the established place of business of the public or retail auction. A retail or public auction may accept bids by telephone, Internet or other remote means.
 - (3) An auction license does not permit a public or retail auction to broker, other than the auctioning of vehicles.
- (b) *Established place of business.*
 - (1) The established place of business for a public or retail auction must include a permanent enclosed building for use as an auction facility within this Commonwealth. This paragraph does not require that all auctioning of vehicles be conducted within the permanent enclosed building.
 - (2) The established place of business must include a private office, located within the permanent enclosed building, separate from display areas and auctioning areas, that has space for the storage of books and records.

(3) The established place of business must have a single business line telephone, located within the permanent enclosed building, that is used for the public or retail auction. The telephone number must be listed under the public or retail auction's licensed name.

(4) The established place of business must be in full compliance with applicable building codes, zoning ordinances and other land-use ordinances.

(5) A public or retail auction shall possess a certificate of occupancy issued by a building code official in accordance with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

(6) A public or retail auction shall post a sign indicating the days and hours that the public may attend for either inspection or auctioning of vehicles.

(7) A public or retail auction shall exhibit a sign, either permanently affixed to the building or erected outdoors in the display area, that shows the licensed name of the auction and that is visible to the public.

(8) A public or retail auction shall have a display area where potential buyers are permitted and invited in the regular course of business to inspect or test drive the vehicles that are being offered for sale by the auction. The display area must be at or adjacent to the auction's established place of business. The display area may be indoors, outdoors or partly indoors and partly outdoors. The outdoor portions of a display area must be properly graded and surfaced with concrete, asphalt, slag, brick, stone, aggregate, gravel, cinder or similar material.

Authority

The provisions of this § 19.19 issued under sections 2 and 4(9) of the Board of Vehicles Act (63 P. S. §§ 818.2 and 818.4(9)).

Source

The provisions of this § 19.19 adopted August 27, 2004, effective August 28, 2004, 34 Pa.B. 4693.

§ 19.20. Standards of licensure for wholesale auction.

(a) *Auction activities.*

(1) Every wholesale auction shall have a business identity separate from other businesses owned or operated by the wholesale auction.

(2) A wholesale auction may not conduct auction activities other than from its established place of business. A wholesale auction may auction only those vehicles that are physically located at the established place of business of the wholesale auction. A wholesale auction may accept bids by telephone, Internet or other remote means.

(3) An auction license does not permit a wholesale auction to broker, other than the auctioning of vehicles.

(b) *Established place of business.*

(1) The established place of business for a wholesale auction must include a permanent enclosed building for use as an auction facility within this Commonwealth. This paragraph does not require that all auctioning be conducted within the permanent enclosed building.

(2) The established place of business must include a private office, located within the permanent enclosed building, separate from display areas and auctioning areas, that has space for the storage of books and records.

(3) The established place of business must have a single business line telephone, located within the permanent enclosed building, that is used for the wholesale auction. The telephone number must be listed under the wholesale auction's licensed name.

(4) The established place of business shall be in full compliance with applicable building codes, zoning ordinances and other land-use ordinances.

(5) A wholesale auction shall possess a certificate of occupancy issued by a building code official in accordance with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

(6) A wholesale auction shall post a sign indicating the auction's licensed name and that the auction is not open to the general public.

Authority

The provisions of this § 19.20 issued under sections 2 and 4(9) of the Board of Vehicles Act (63 P. S. §§ 818.2 and 818.4(9)).

Source

The provisions of this § 19.20 adopted August 27, 2004, effective August 28, 2004, 34 Pa.B. 4693.

POWERS AND DUTIES OF THE BOARD

§ 19.21. [Reserved].

Source

The provisions of this § 19.21 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; reserved July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial page (261714).

Notes of Decisions

Restraint of Competition

A substantial Federal question sufficient to confer subject matter jurisdiction is raised by the claim that promulgation and enforcement of 49 Pa. Code § 19.21 (relating to powers and duties) substantially restrains, restricts, and limits competition in the acquisition, purchase, and sale of new cars by nonfranchised dealers in violation of the Sherman Act, but a substantial Federal question is not raised by the claim that this regulation is a violation of economic substantive due process in that the effect may be to hinder or prevent plaintiffs from engaging in the automobile dealer business. *Brenner v. State Board of Motor Vehicle Manufacturers, Dealers and Salesmen*, 413 F.Supp. 639 (E. D. Pa. 1976).

§ 19.22. Investigation.

The Board will investigate on its own initiative or upon the verified complaint in writing of a person, allegations of the wrongful act of a licensee of the act and will have the power to suspend or revoke licenses issued by the Board if, after notice and hearing, the person charged is found guilty of committing or attempting to commit the following acts, in addition to those acts enumerated in the act:

(1) Has required a purchaser of a new vehicle, as a condition of sale and delivery of the vehicle, to also purchase special features, appliances, accessories or equipment not desired or requested by the purchaser.

(2) Has willfully failed or refused to perform a written agreement with a retail buyer involving the sale of a vehicle.

(3) Has used the words “lease” or “leasing” in a dealer’s trade name.

(4) Has with intent to sell or in any way dispose of vehicles, or with intent to increase the volume of sales of vehicles or to induce the public in any manner to enter into an obligation relating thereto, or to acquire title thereto or an interest therein, made, published, disseminated, or caused, directly or indirectly, the same to be made, published, disseminated, circulated or placed before the public, in a newspaper or other publication in the form of a book, notice, handbill, poster, sign, bill circular, pamphlet or letter, or over a radio or television station or other medium of wireless communication, or in another way, similar or dissimilar to the foregoing, an advertisement, announcement, or statement, of any sort regarding the vehicles so offered to the public or concerning the quantity, quality, value, merit, use, present or former price, cost, reason for price, motive for sale or concerning the method of pricing, or the possession of rewards, prizes or distinctions conferred, regarding the vehicles which advertisement contains an assertion, representation, or statement of fact which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading.

(5) Has advertised a vehicle for sale, in a manner indicating that the sale is being made by a private party or household not engaged in the vehicle business, unless that advertisement shall affirmatively and unmistakably indicate and state that the seller is a dealer or salesperson and not a private party.

(6) Has advertised misrepresenting the true nature of the business by the use of the words “manufacturer,” “importer” or “wholesaler” or has represented that he is selling at wholesale in any form of sale or advertising unless the dealer is actually selling at wholesale for the purpose of resale, or unless the dealer is in fact advertising true wholesale prices.

(7) Has misrepresented the true nature of the business by the use of the words “sale at wholesale”, “sales at wholesale,” “wholesale sale,” “wholesale prices” or words of similar import containing the word “wholesale” unless vehicles listed or sold under the claims are sales to a purchaser for the purpose of resale.

(8) Has advertised a vehicle for sale and then has refused to show, demonstrate or sell the vehicle offered in accordance with the terms of the offer, subject to prior sale.

(9) Has used the word “new” in the trade name, in the advertising, or on the checks or business stationery of a dealer who engages only in the sale, purchase or exchange of used vehicles.

(10) Has used the words “broker” or “brokering” in the trade name, in the advertising, or on the checks or business stationery of a dealer or auction.

Authority

The provisions of this § 19.22 issued under sections 2, 4(9) and 5(e) of the Board of Vehicles Act (63 P. S. §§ 818.2, 818.4(9) and 818.5(e)).

Source

The provisions of this § 19.22 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; amended December 30, 1977, effective December 31, 1977, 7 Pa.B. 3972; amended March 7, 1986, effective March 8, 1986, 16 Pa.B. 673; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial pages (261714) to (261715).

Notes of Decisions

New Car Dealers

The requirement in 49 Pa. Code § 19.22(19) (relating to investigation) that new car dealers have a franchise before selling new cars is an example of the difference in protection and regulation which is required for new car dealers and for used car dealers. *D & B Auto Sales v. State Board of Motor Vehicle Manufacturers, Dealers and Salesmen*, 370 A.2d 428 (Pa. Cmwlth. 1977).

§ 19.23. Vehicle shows, off-premise sales and exhibitions.

A vehicle show, off-premise sale or exhibition may not last for more than 14-consecutive days. To preclude the operation of an unlicensed branch location, a dealer may not participate in any show or combination of shows at a given location for more than 15 days in any period of 30 days, for more than 30 days in any period of 3 months or for more than 60 days in any period of 12 months.

Authority

The provisions of this § 19.23 amended under section 4 of the Board of Vehicles Act (63 P. S. § 818.4).

Source

The provisions of this § 19.23 adopted July 18, 1968; amended May 30, 1975, effective May 31, 1975, 5 Pa.B. 1403; amended July 19, 2002, effective July 20, 2002, 32 Pa.B. 3485. Immediately preceding text appears at serial page (261716).

PROTEST PROCEEDINGS**§ 19.31. Filing of documents.**

(a) *Place of filing.* Every pleading and other document in a protest matter shall be filed with the prothonotary for the Department of State at One Penn Center, 2601 North Third Street, Post Office Box 2649, Harrisburg, PA 17105-2649.

(b) *Copies.* An original and one copy of each document shall be filed with the prothonotary. A copy of each document shall be served on each party to the protest. An additional copy of each document shall be served on the Board's counsel for protest matters (protest counsel) at One Penn Center, 2601 North Third Street, Post Office Box 2649, Harrisburg, PA 17105-2649.

Authority

The provisions of this § 19.31 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.31 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

§ 19.32. Initiation of a protest.

(a) *Protest petition.* The protest must be in petition form and set forth in numbered paragraphs the material facts sufficient to justify relief to the protestant, in accordance with 1 Pa. Code § 35.17 (relating to petitions generally).

(1) The protest shall have appended to it a copy of any demand for mediation required by section 11(a) of the act (63 P. S. § 818.11(a)).

(2) A protest filed under section 8(d) of the act (63 P. S. § 818.8(d)) shall have appended to it a copy of any notice of the action that is being protested.

(3) A protest filed under section 13 of the act (63 P. S. § 818.13) shall have appended to it a copy of any notice of intent to terminate a franchise.

(4) A protest filed under section 27 of the act (63 P. S. § 818.27) shall have appended to it a copy of any notice of establishment or relocation of a franchise.

(b) *Service of the protest.* A copy of the protest shall be served on the representative of the manufacturer or distributor (respondent) who provided any notice, as set forth in subsection (a), of the action that is being protested. If notice was not provided, a copy of the protest shall be served on a managerial representative of the respondent whose responsibilities include the subject of the protest.

Authority

The provisions of this § 19.32 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.32 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

§ 19.33. Intervention.

(a) *Intervention as of right.* In any protest matter filed under section 27 of the act (63 P. S. § 818.27), the existing dealer who seeks to relocate a franchise or the additional dealer to whom the respondent seeks to award a franchise may intervene on behalf of the respondent upon the filing of a notice of intervention setting forth its right to intervene under this subsection. Any party intervening as of right on behalf of the respondent under this subsection shall file an answer to the protest contemporaneously with the filing of the notice of intervention or as directed in the scheduling order, whichever is later.

(b) *Intervention by permission.* Any other person seeking to intervene shall petition to intervene in accordance with 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Authority

The provisions of this § 19.33 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.33 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

§ 19.34. Time for adjudication.

(a) *Scheduling order.* Upon receipt from one or more parties of notice that mediation required by section 11(a) of the act (63 P. S. § 818.11(a)) was not successful, protest counsel will prepare and issue a scheduling order. The scheduling order will set forth the dates by which the answer, requests for subpoenas, prehearing statements and posthearing briefs shall be filed, as well as the date and time for the prehearing conference and the location and beginning date and time of the hearing. The dates will be determined to permit the Board to issue its adjudication in compliance with the time requirements of section 8 of the act (63 P. S. § 818.8).

(b) *Waiver.* The parties may waive the time for adjudicating a protest matter in section 8 of the act (63 P. S. § 818.8). A waiver must be in writing, specifying the time period that is to be waived, and signed on behalf of all parties joining in the waiver. Unless otherwise specified in the filing, the Board will treat the filing of any waiver as a request for a continuance through that time period and will issue an amended scheduling order accordingly.

(c) *Extension of time.* Any request for an extension of time or continuance that would delay the filing of posthearing briefs shall be accompanied by a waiver through the second monthly meeting of the Board following the date

posthearing briefs are to be filed as if the request were to be granted. The Board may grant a request for extension of time or continuance for which the protestant, or an intervenor on behalf of the protestant, does not also sign the waiver.

Authority

The provisions of this § 19.34 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.34 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

§ 19.35. Subsequent pleadings.

(a) *Answer.* The respondent, and any intervenor on behalf of the respondent, may not file an answer to a protest until directed to do so by a scheduling order issued by the Board. An answer must either admit or deny each numbered paragraph of the protest, in accordance with 1 Pa. Code § 35.35 (relating to answers to complaints and petitions), and may contain averments of new matter.

(b) *Reply to new matter.* The protestant, and any intervenor on behalf of the protestant, may reply within 10 days to an answer that sets forth new matter.

Authority

The provisions of this § 19.35 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.35 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

§ 19.36. Prehearing statements.

(a) *Filing of prehearing statement.* Each party to a protest shall file a prehearing statement in accordance with the scheduling order.

(b) *Content of prehearing statement.* A prehearing statement must contain:

(1) A concise statement of the facts that will be offered by oral or documentary evidence at the hearing and a statement of any unusual questions of evidence anticipated with respect to the proof of such facts.

(2) A statement of any questions of law anticipated with respect to the issues in the case. The questions shall be presented with a statement of authority supporting the position taken.

(3) The names and addresses of all persons who may be called as witnesses. The identification of a witness does not create any obligation to call the witness or to procure the witness's attendance at the hearing.

(4) The report and curriculum vitae of any expert whose opinion will be offered into evidence at the time of hearing. The report must include the findings and conclusions of the expert.

(5) A list of all exhibits and copies of the exhibits that a participant intends to use at the hearing.

(6) An estimate of the length of time that will be required to present the party's case in chief.

(c) *Sanctions.* Failure to file a prehearing statement as required by this section and within the time specified in the scheduling order may subject a party to sanctions, including being precluded from presenting evidence.

(d) *Supplement.* A party may supplement its prehearing statement at any time prior to the prehearing conference. A party may not present any documentary evidence or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown.

Authority

The provisions of this § 19.36 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.36 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

§ 19.37. Prehearing conference.

(a) *Prehearing conference.* A representative of each party to a protest shall participate in a prehearing conference under 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings) as directed by the scheduling order. Unless otherwise ordered by the Board, the prehearing conference will be telephonic and will be initiated by protest counsel.

(b) *Authority of protest counsel.* In connection with the prehearing conference, protest counsel shall have all authority of a presiding officer under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

Authority

The provisions of this § 19.37 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.37 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

§ 19.38. Posthearing briefs.

(a) *Posthearing briefs.* Posthearing briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs), except that a brief may not have appended to it any copy of an exhibit or any notes of testimony.

(b) *Reply briefs.* A party may file a reply brief no later than 7 days after an opposing party's filing of a posthearing brief.

Authority

The provisions of this § 19.38 issued under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Source

The provisions of this § 19.38 adopted February 3, 2006, effective February 4, 2006, 36 Pa.B. 536; corrected February 10, 2006, 36 Pa.B. 714.

[Next page is 21-1.]