



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB0076

Introduced 1/12/2017, by Sen. Ira I. Silverstein

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the New Vehicle Buyer Protection Act of 2017. Provides that if a manufacturer is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle or make restitution to the buyer. Provides that it shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle: (1) the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven after 2 or more repairs; (2) the same nonconformity has been subject to repair 4 or more times; or (3) the vehicle is out of service by reason of repair for more than 30 calendar days since delivery of the vehicle to the buyer. Requires a buyer to initiate a qualified third-party dispute resolution process, if available, before asserting the presumption that a reasonable number of attempts have been made to repair the nonconformity. Prohibits a person from selling a motor vehicle without first disclosing to the prospective buyer that the vehicle had a nonconformity and the nonconformity was corrected. Contains provisions concerning a "Lemon Law Buyback" decal; a warranty buyback notice; remedies; a manufacturer's fee for each vehicle sold; sales and use tax reimbursements; and other matters. Amends the Retailers' Occupation Tax Act and the Illinois Vehicle Code. Changes references to "New Vehicle Buyer Protection Act" to "New Vehicle Buyer Protection Act of 2017". Amends the State Finance Act. Creates the Motor Vehicle Dispute Resolution Certification Fund. Repeals the New Vehicle Buyer Protection Act.

LRB100 03638 KTG 13643 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the New  
5 Vehicle Buyer Protection Act of 2017.

6 Section 3. Definitions. As used in this Act:

7 "Buyer" or "retail buyer" means any individual who buys a  
8 new motor vehicle from a person, including a partnership,  
9 limited liability company, corporation, association, or any  
10 other legal entity, engaged in the business of manufacturing,  
11 distributing, or selling vehicles at retail.

12 "Distributor" means any individual, partnership,  
13 corporation, association, or other legal relationship that  
14 stands between the manufacturer and the retail seller in  
15 purchases, consignments, or contracts for sale of motor  
16 vehicles.

17 "Express warranty" has the same meaning, for the purposes  
18 of this Act, as it has for the purposes of the Uniform  
19 Commercial Code.

20 "Lease" means any contract for the lease or bailment for  
21 the use of a motor vehicle by an individual, for a term  
22 exceeding 4 months, primarily for personal, family, or  
23 household purposes, whether or not it is agreed that the lessee

1 bears the risk of the vehicles' depreciation.

2 "Lessee" means an individual who leases a motor vehicle  
3 under a lease.

4 "Lessor" means a person who regularly leases motor vehicles  
5 under a lease.

6 "Manufacturer" means any individual, partnership,  
7 corporation, association, or other legal relationship that  
8 manufactures, assembles, or produces motor vehicles.

9 "Motor home" means a vehicular unit built on, or  
10 permanently attached to, a self-propelled motor vehicle  
11 chassis, chassis cab, or van, which becomes an integral part of  
12 the completed vehicle, designed for human habitation for  
13 recreational or emergency occupancy.

14 "New motor vehicle" means a new motor vehicle that is  
15 bought or used primarily for personal, family, or household  
16 purposes. "New motor vehicle" also means a new motor vehicle  
17 with a gross vehicle weight under 10,000 pounds that is bought  
18 or used primarily for business purposes by a person, including  
19 a partnership, limited liability company, corporation,  
20 association, or any other legal entity, to which not more than  
21 5 motor vehicles are registered in this State. "New motor  
22 vehicle" includes the chassis, cab, and that portion of a motor  
23 home devoted to its propulsion, but does not include any  
24 portion designed, used, or maintained primarily for human  
25 habitation, a dealer-owned vehicle, and a "demonstrator" or  
26 other motor vehicle sold with a manufacturer's new car

1 warranty, but does not include a motorcycle or a motor vehicle  
2 which is not registered under the Illinois Vehicle Code because  
3 it is to be operated or used exclusively off the highways. A  
4 demonstrator is a vehicle assigned by a dealer for the purpose  
5 of demonstrating qualities and characteristics common to  
6 vehicles of the same or similar model and type.

7 "Nonconformity" means a nonconformity which substantially  
8 impairs the use, value, or safety of the new motor vehicle to  
9 the buyer or lessee.

10 "Retail seller" or "retailer" means any individual,  
11 partnership, corporation, association, or other legal  
12 relationship that engages in the business of selling or leasing  
13 motor vehicles to retail buyers.

14 "Service contract" means a contract in writing to perform,  
15 over a fixed period of time or for a specified duration,  
16 services relating to the maintenance or repair of a motor  
17 vehicle, except that this term does not include a policy of  
18 automobile insurance as defined in Section 143.13 of the  
19 Illinois Insurance Code.

20 Section 5. Failure to service or repair. If a manufacturer  
21 or its representative in this State is unable to service or  
22 repair a new motor vehicle to conform to the applicable express  
23 warranties after a reasonable number of attempts, the  
24 manufacturer shall either promptly replace the new motor  
25 vehicle in accordance with paragraph (1) or promptly make

1 restitution to the buyer in accordance with paragraph (2).  
2 However, the buyer shall be free to elect restitution in lieu  
3 of replacement, and in no event shall the buyer be required by  
4 the manufacturer to accept a replacement vehicle.

5 (1) In the case of replacement, the manufacturer shall  
6 replace the buyer's vehicle with a new motor vehicle  
7 substantially identical to the vehicle replaced. The  
8 replacement vehicle shall be accompanied by all express and  
9 implied warranties that normally accompany new motor  
10 vehicles of that specific kind. The manufacturer also shall  
11 pay for, or to, the buyer the amount of any sales or use  
12 tax, license fees, registration fees, and other official  
13 fees which the buyer is obligated to pay in connection with  
14 the replacement, plus any incidental damages to which the  
15 buyer is entitled under Section 30, including, but not  
16 limited to, reasonable repair, towing, and rental car costs  
17 actually incurred by the buyer.

18 (2) In the case of restitution, the manufacturer shall  
19 make restitution in an amount equal to the actual price  
20 paid or payable by the buyer, including any charges for  
21 transportation and manufacturer-installed options, but  
22 excluding non-manufacturer items installed by a dealer or  
23 the buyer, and including any collateral charges such as  
24 sales or use tax, license fees, registration fees, and  
25 other official fees, plus any incidental damages to which  
26 the buyer is entitled under Section 30, including, but not

1 limited to, reasonable repair, towing, and rental car costs  
2 actually incurred by the buyer.

3 (3) When the manufacturer replaces the new motor  
4 vehicle pursuant to paragraph (1), the buyer shall only be  
5 liable to pay the manufacturer an amount directly  
6 attributable to use by the buyer of the replaced vehicle  
7 prior to the time the buyer first delivered the vehicle to  
8 the manufacturer or distributor, or its authorized service  
9 and repair facility for correction of the problem that gave  
10 rise to the nonconformity. When restitution is made  
11 pursuant to paragraph (2), the amount to be paid by the  
12 manufacturer to the buyer may be reduced by the  
13 manufacturer by that amount directly attributable to use by  
14 the buyer prior to the time the buyer first delivered the  
15 vehicle to the manufacturer or distributor, or its  
16 authorized service and repair facility for correction of  
17 the problem that gave rise to the nonconformity. The amount  
18 directly attributable to use by the buyer shall be  
19 determined by multiplying the actual price of the new motor  
20 vehicle paid or payable by the buyer, including any charges  
21 for transportation and manufacturer-installed options, by  
22 a fraction having as its denominator 120,000 and having as  
23 its numerator the number of miles traveled by the new motor  
24 vehicle prior to the time the buyer first delivered the  
25 vehicle to the manufacturer or distributor, or its  
26 authorized service and repair facility for correction of

1 the problem that gave rise to the nonconformity. Nothing in  
2 this paragraph shall in any way limit the rights or  
3 remedies available to the buyer under any other law.

4 (4) A buyer of a new motor vehicle shall also include a  
5 lessee of a new motor vehicle.

6 Section 10. Nonconformity.

7 (a) It shall be presumed that a reasonable number of  
8 attempts have been made to conform a new motor vehicle to the  
9 applicable express warranties if, within 18 months from  
10 delivery to the buyer or 18,000 miles on the odometer of the  
11 vehicle, whichever occurs first, one or more of the following  
12 occurs:

13 (1) The same nonconformity results in a condition that  
14 is likely to cause death or serious bodily injury if the  
15 vehicle is driven and the nonconformity has been subject to  
16 repair 2 or more times by the manufacturer or its agents,  
17 and the buyer or lessee has at least once directly notified  
18 the manufacturer of the need for the repair of the  
19 nonconformity.

20 (2) The same nonconformity has been subject to repair 4  
21 or more times by the manufacturer or its agents and the  
22 buyer has at least once directly notified the manufacturer  
23 of the need for the repair of the nonconformity.

24 (3) The vehicle is out of service by reason of repair  
25 of nonconformities by the manufacturer or its agents for a

1 cumulative total of more than 30 calendar days since  
2 delivery of the vehicle to the buyer. The 30-day limit  
3 shall be extended only if repairs cannot be performed due  
4 to conditions beyond the control of the manufacturer or its  
5 agents. The buyer shall be required to directly notify the  
6 manufacturer pursuant to paragraphs (1) and (2) only if the  
7 manufacturer has clearly and conspicuously disclosed to  
8 the buyer, with the warranty or the owner's manual, the  
9 provisions of this Section and that of Section 5, including  
10 the requirement that the buyer must notify the manufacturer  
11 directly pursuant to paragraphs (1) and (2). The  
12 notification, if required, shall be sent to the address, if  
13 any, specified clearly and conspicuously by the  
14 manufacturer in the warranty or owner's manual. This  
15 presumption shall be a rebuttable presumption affecting  
16 the burden of proof, and it may be asserted by the buyer in  
17 any civil action, including an action in small claims  
18 court, or other formal or informal proceeding.

19 (b) If a qualified third-party dispute resolution process  
20 exists, and the buyer receives timely notification in writing  
21 of the availability of that qualified third-party dispute  
22 resolution process with a description of its operation and  
23 effect, the presumption in subsection (a) may not be asserted  
24 by the buyer until after the buyer has initially resorted to  
25 the qualified third-party dispute resolution process as  
26 required in subsection (c). Notification of the availability of



1 the qualified third-party dispute resolution process is not  
2 timely if the buyer suffers any prejudice resulting from any  
3 delay in giving the notification. If a qualified third-party  
4 dispute resolution process does not exist, or if the buyer is  
5 dissatisfied with that third-party decision, or if the  
6 manufacturer or its agent neglects to promptly fulfill the  
7 terms of the qualified third-party dispute resolution process  
8 decision after the decision is accepted by the buyer, the buyer  
9 may assert the presumption provided in subsection (a) in an  
10 action to enforce the buyer's rights under Section 5. The  
11 findings and decision of a qualified third-party dispute  
12 resolution process shall be admissible in evidence in the  
13 action without further foundation. Any period of limitation of  
14 actions under any federal or State laws with respect to any  
15 person shall be extended for a period equal to the number of  
16 days between the date a complaint is filed with a third-party  
17 dispute resolution process and the date of its decision or the  
18 date before which the manufacturer or its agent is required by  
19 the decision to fulfill its terms if the decision is accepted  
20 by the buyer, whichever occurs later.

21 (c) A qualified third-party dispute resolution process  
22 shall be one that does all of the following:

23 (1) Complies with the minimum requirements of the  
24 Federal Trade Commission for informal dispute settlement  
25 procedures as set forth in Part 703 of Title 16 of the Code  
26 of Federal Regulations, as those regulations read on

1 January 1, 1987.

2 (2) Renders decisions which are binding on the  
3 manufacturer if the buyer elects to accept the decision.

4 (3) Prescribes a reasonable time, not to exceed 30 days  
5 after the decision is accepted by the buyer, within which  
6 the manufacturer or its agent must fulfill the terms of its  
7 decisions.

8 (4) Provides arbitrators who are assigned to decide  
9 disputes with copies of, and instruction in, the provisions  
10 of the Federal Trade Commission's regulations in Part 703  
11 of Title 16 of the Code of Federal Regulations as those  
12 regulations read on January 1, 1987, Article 2 of the  
13 Uniform Commercial Code, and this Act.

14 (5) Requires the manufacturer, when the process  
15 orders, under the terms of this Act, either that the  
16 nonconforming motor vehicle be replaced if the buyer  
17 consents to this remedy or that restitution be made to the  
18 buyer, to replace the motor vehicle or make restitution in  
19 accordance with Section 5.

20 (6) Provides, at the request of the arbitrator or a  
21 majority of the arbitration panel, for an inspection and  
22 written report on the condition of a nonconforming motor  
23 vehicle, at no cost to the buyer, by an automobile expert  
24 who is independent of the manufacturer.

25 (7) Takes into account, in rendering decisions, all  
26 legal and equitable factors, including, but not limited to,

1 the written warranty, the rights and remedies conferred in  
2 regulations of the Federal Trade Commission contained in  
3 Part 703 of Title 16 of the Code of Federal Regulations as  
4 those regulations read on January 1, 1987, Article 2 of the  
5 Uniform Commercial Code, this Act, and any other equitable  
6 considerations appropriate in the circumstances. Nothing  
7 in this Act requires that, to be certified as a qualified  
8 third-party dispute resolution process pursuant to this  
9 Section, decisions of the process must consider or provide  
10 remedies in the form of awards of punitive damages or  
11 multiple damages, under subsection (c) of Section 30, or of  
12 attorneys' fees under subsection (d) of Section 30 , or of  
13 consequential damages other than as provided in  
14 subsections (a) and (b) of Section 30, including, but not  
15 limited to, reasonable repair, towing, and rental car costs  
16 actually incurred by the buyer.

17 (8) Requires that no arbitrator deciding a dispute may  
18 be a party to the dispute and that no other person,  
19 including an employee, agent, or dealer for the  
20 manufacturer, may be allowed to participate substantively  
21 in the merits of any dispute with the arbitrator unless the  
22 buyer is allowed to participate also. Nothing in this  
23 subsection prohibits any member of an arbitration from  
24 deciding a dispute.

25 (9) Obtains and maintains certification by the  
26 Attorney General as provided in Section 35.

1           (d) (1) Except as provided in paragraph (2), no person  
2 shall sell, either at wholesale or retail, lease, or transfer a  
3 motor vehicle transferred by a buyer or lessee to a  
4 manufacturer pursuant to Section 5 or a similar statute of any  
5 other state, unless the nature of the nonconformity experienced  
6 by the original buyer or lessee is clearly and conspicuously  
7 disclosed to the prospective buyer, lessee, or transferee, the  
8 nonconformity is corrected, and the manufacturer warrants to  
9 the new buyer, lessee, or transferee in writing for a period of  
10 one year that the motor vehicle is free of that nonconformity.

11           (2) Except for the requirement that the nature of the  
12 nonconformity be disclosed to the transferee, paragraph (1)  
13 does not apply to the transfer of a motor vehicle to an  
14 educational institution if the purpose of the transfer is to  
15 make the motor vehicle available for use in automotive repair  
16 courses.

17           Section 15. Automotive consumer notification.

18           (a) The General Assembly finds and declares all of the  
19 following:

20               (1) That the expansion of state warranty laws covering  
21 new and used cars has given important and valuable  
22 protection to consumers.

23               (2) That, in states without this valuable warranty  
24 protection, used and new motor vehicles are being resold in  
25 the marketplace without notice to the subsequent

1 purchaser.

2 (3) That other states have addressed this problem by  
3 requiring notices on the title of these vehicles or other  
4 notice procedures to warn consumers that the motor vehicles  
5 were repurchased by a dealer or manufacturer because the  
6 vehicle could not be repaired in a reasonable length of  
7 time or a reasonable number of repair attempts or the  
8 dealer or manufacturer was not willing to repair the  
9 vehicle.

10 (4) That these notices serve the interests of consumers  
11 who have a right to information relevant to their buying  
12 decisions.

13 (5) That the disappearance of these notices upon the  
14 transfer of title from another state to this State  
15 encourages the transport of "lemons" to this State for sale  
16 to the drivers of this State.

17 (b) As used in this Section, "dealer" means any person  
18 engaged in the business of selling, offering for sale, or  
19 negotiating the retail sale of, a used motor vehicle or selling  
20 motor vehicles as a broker or agent for another, including the  
21 officers, agents, and employees of the person and any  
22 combination or association of dealers.

23 (c) Any manufacturer who reacquires or assists a dealer or  
24 lienholder to reacquire a motor vehicle registered in this  
25 State, any other state, or a federally administered district  
26 shall, prior to any sale, lease, or transfer of the vehicle in

1 this State, or prior to exporting the vehicle to another state  
2 for sale, lease, or transfer if the vehicle was registered in  
3 this State and reacquired pursuant to Section 5, cause the  
4 vehicle to be retitled in the name of the manufacturer, request  
5 the Secretary of State to inscribe the manufacturer's  
6 certificate of title with the notation "Lemon Law Buyback", and  
7 affix a decal to the vehicle in accordance with Section 25 if  
8 the manufacturer knew or should have known that the vehicle is  
9 required by law to be replaced, accepted for restitution due to  
10 the failure of the manufacturer to conform the vehicle to  
11 applicable warranties pursuant to Section 5, or accepted for  
12 restitution by the manufacturer due to the failure of the  
13 manufacturer to conform the vehicle to warranties required by  
14 any other applicable law of the State, any other state, or  
15 federal law.

16 (d) Any manufacturer who reacquires or assists a dealer or  
17 lienholder to reacquire a motor vehicle in response to a  
18 request by the buyer or lessee that the vehicle be either  
19 replaced or accepted for restitution because the vehicle did  
20 not conform to express warranties shall, prior to the sale,  
21 lease, or other transfer of the vehicle, execute and deliver to  
22 the subsequent transferee a notice and obtain the transferee's  
23 written acknowledgment of a notice, as prescribed by Section  
24 20.

25 (e) Any person, including any dealer, who acquires a motor  
26 vehicle for resale and knows or should have known that the

1 vehicle was reacquired by the vehicle's manufacturer in  
2 response to a request by the last retail owner or lessee of the  
3 vehicle that it be replaced or accepted for restitution because  
4 the vehicle did not conform to express warranties shall, prior  
5 to the sale, lease, or other transfer, execute and deliver to  
6 the subsequent transferee a notice and obtain the transferee's  
7 written acknowledgment of a notice, as prescribed by Section  
8 20.

9 (f) Any person, including any manufacturer or dealer, who  
10 sells, leases, or transfers ownership of a motor vehicle when  
11 the vehicle's certificate of title is inscribed with the  
12 notation "Lemon Law Buyback" shall, prior to the sale, lease,  
13 or ownership transfer of the vehicle, provide the transferee  
14 with a disclosure statement signed by the transferee that  
15 states: "THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE  
16 TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS.  
17 THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE  
18 NOTATION "LEMON LAW BUYBACK"."

19 (g) The disclosure requirements in subsections (d), (e),  
20 and (f) are cumulative with all other consumer notice  
21 requirements and do not relieve any person, including any  
22 dealer or manufacturer, from complying with any other  
23 applicable law, including any requirement of subsection (d) of  
24 Section 10.

25 Section 20. Warranty buyback notice.

1 (a) The notice required in subsections (d) and (e) of  
2 Section 15 shall be prepared by the manufacturer of the  
3 reacquired vehicle and shall disclose all of the following:

4 (1) Year, make, model, and vehicle identification  
5 number of the vehicle.

6 (2) Whether the title to the vehicle has been inscribed  
7 with the notation "Lemon Law Buyback".

8 (3) The nature of each nonconformity reported by the  
9 original buyer or lessee of the vehicle.

10 (4) Repairs, if any, made to the vehicle in an attempt  
11 to correct each nonconformity reported by the original  
12 buyer or lessee.

13 (b) The notice shall be on a form 8 1/2 x 11 inches in size  
14 and printed in no smaller than 10-point black type on a white  
15 background. The form shall only contain the following  
16 information prior to it being filled out by the manufacturer:

17 WARRANTY BUYBACK NOTICE

18 (Check One)

19 /. . ./ This vehicle was repurchased by the vehicle's  
20 manufacturer after the last retail owner or lessee requested  
21 its repurchase due to the problem(s) listed below.

22 / . . ./ THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO  
23 A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE  
24 TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE  
25 NOTATION "LEMON LAW BUYBACK." Under Illinois law, the



1 manufacturer must warrant to you, for a one year period, that  
2 the vehicle is free of the problem(s) listed below.

3 V.I.N: ..... Year: ..... Make: ..... Model: .....

4	Problem(s) Reported by	Repairs Made, if any, to
5	Original Owner	Correct Reported Problem(s)
6	.....	.....
7	.....	.....
8	.....	.....
9	.....	.....
10	.....	.....
11	.....	.....
12	Signature of Manufacturer	Date
13	.....	.....
14	Signature of Dealer(s)	Date
15	.....	.....
16	.....	.....
17	.....	.....
18	Signature of Retail Buyer or	Date
19	Lessee	
20	.....	.....
21	.....	.....

22 (c) The manufacturer shall provide an executed copy of the  
23 notice to the manufacturer's transferee. Each transferee,

1 including a dealer, to whom the motor vehicle is transferred  
2 prior to its sale to a retail buyer or lessee shall be provided  
3 an executed copy of the notice by the previous transferor.

4 Section 25. Lemon decal.

5 (a) The decal required by subsection (c) of Section 15 to  
6 be affixed by a manufacturer to a motor vehicle, shall be  
7 affixed to the left front door frame of the vehicle, or, if the  
8 vehicle does not have a left front door frame, it shall be  
9 affixed in a location designated by the Secretary of State. The  
10 decal shall specify that title to the motor vehicle has been  
11 inscribed with the notation "Lemon Law Buyback" and shall be  
12 affixed to the vehicle in a manner prescribed by the Secretary  
13 of State.

14 (b) No person shall knowingly remove or alter any decal  
15 affixed to a vehicle pursuant to subsection (a), whether or not  
16 licensed under the Illinois Vehicle Code.

17 Section 30. Remedies.

18 (a) Any buyer of consumer goods who is damaged by a failure  
19 to comply with any obligation under this Act or under an  
20 implied or express warranty or service contract may bring an  
21 action for the recovery of damages and other legal and  
22 equitable relief.

23 (b) The measure of the buyer's damages in an action under  
24 this Section shall include the rights of replacement or

1 reimbursement as set forth in Section 5, and the following:

2 (1) Where the buyer has rightfully rejected or  
3 justifiably revoked acceptance of the goods or has  
4 exercised any right to cancel the sale, Sections 2-711,  
5 2-712, and 2-713 of the Uniform Commercial Code shall  
6 apply.

7 (2) Where the buyer has accepted the goods, Sections  
8 2-714 and 2-715 of the Uniform Commercial Code shall apply,  
9 and the measure of damages shall include the cost of  
10 repairs necessary to make the goods conform.

11 (c) If the buyer establishes that the failure to comply was  
12 willful, the judgment may include, in addition to the amounts  
13 recovered under subsection (a), a civil penalty which shall not  
14 exceed 2 times the amount of actual damages. This subsection  
15 shall not apply in any class action under Section 2-404 of the  
16 Code of Civil Procedure or with respect to a claim based solely  
17 on a breach of an implied warranty.

18 (d) If the buyer prevails in an action under this Section,  
19 the buyer shall be allowed by the court to recover as part of  
20 the judgment a sum equal to the aggregate amount of costs and  
21 expenses, including attorney's fees based on actual time  
22 expended, determined by the court to have been reasonably  
23 incurred by the buyer in connection with the commencement and  
24 prosecution of such action.

25 (e) (1) Except as otherwise provided in this subsection, if  
26 the buyer establishes a violation of Section 5, the buyer shall

1 recover damages and reasonable attorney's fees and costs, and  
2 may recover a civil penalty of up to 2 times the amount of  
3 damages.

4 (2) If the manufacturer maintains a qualified third-party  
5 dispute resolution process which substantially complies with  
6 Section 10, the manufacturer shall not be liable for any civil  
7 penalty pursuant to this subsection.

8 (3) After the occurrence of the events giving rise to the  
9 presumption established in subsection (a) of Section 10, the  
10 buyer may serve upon the manufacturer a written notice  
11 requesting that the manufacturer comply with Section 5. If the  
12 buyer fails to serve the notice, the manufacturer shall not be  
13 liable for a civil penalty pursuant to this subsection.

14 (4) If the buyer serves the notice described in paragraph  
15 (3) and the manufacturer complies with Section 5 within 30 days  
16 of the service of that notice, the manufacturer shall not be  
17 liable for a civil penalty pursuant to this subsection.

18 (5) If the buyer recovers a civil penalty under subsection  
19 (c), the buyer may not also recover a civil penalty under this  
20 subsection for the same violation.

21 Section 35. Third-party dispute resolution process  
22 certification program; fund.

23 (a) The Attorney General shall establish a program for  
24 certifying each third-party dispute resolution process used  
25 for the arbitration of disputes pursuant to subsection (b) of

1 Section 10. In establishing the program, the Attorney General  
2 shall do all of the following:

3 (1) Prescribe and provide forms to be used to apply for  
4 certification under this Act.

5 (2) Establish a set of minimum standards which shall be  
6 used to determine whether a third-party dispute resolution  
7 process is in substantial compliance with subsection (c) of  
8 Section 10.

9 (3) Prescribe the information which each manufacturer,  
10 or other entity, that operates a third-party dispute  
11 resolution process shall provide the Attorney General in  
12 the application for certification. In prescribing the  
13 information to accompany the application for  
14 certification, the Attorney General shall require the  
15 manufacturer, or other entity, to provide only that  
16 information which the Attorney General finds is reasonably  
17 necessary to enable the Attorney General to determine  
18 whether the third-party dispute resolution process is in  
19 substantial compliance with subsection (c) of Section 10.

20 (4) Prescribe the information that each qualified  
21 third-party dispute resolution process shall provide the  
22 Attorney General, and the time intervals at which the  
23 information shall be required, to enable the Attorney  
24 General to determine whether the qualified third-party  
25 dispute resolution process continues to operate in  
26 substantial compliance with subsection (c) of Section 10.

1 (b) (1) Each manufacturer may establish, or otherwise make  
2 available to buyers or lessees of new motor vehicles, a  
3 qualified third-party dispute resolution process for the  
4 resolution of disputes pursuant to subsection (b) of Section  
5 10. A manufacturer that itself operates the third-party dispute  
6 resolution process shall apply to the Attorney General for  
7 certification of that process. If the manufacturer makes the  
8 third-party dispute resolution process available to buyers or  
9 lessees of new motor vehicles through contract or other  
10 arrangement with another entity, that entity shall apply to the  
11 Attorney General for certification. An entity that operates a  
12 third-party dispute resolution process for more than one  
13 manufacturer shall make a separate application for  
14 certification for each manufacturer that uses that entity's  
15 third-party dispute resolution process. The application for  
16 certification shall be accompanied by the information  
17 prescribed by the Attorney General.

18 (2) The Attorney General shall review the application and  
19 accompanying information and, after conducting an onsite  
20 inspection, shall determine whether the third-party dispute  
21 resolution process is in substantial compliance with  
22 subsection (c) of Section 10 and this Section. If the Attorney  
23 General determines that the process is in substantial  
24 compliance, the Attorney General shall certify the process. If  
25 the Attorney General determines that the process is not in  
26 substantial compliance, the Attorney General shall deny

1 certification and shall state, in writing, the reasons for  
2 denial and the modifications in the operation of the process  
3 that are required in order for the process to be certified.

4 (3) The Attorney General shall make a final determination  
5 whether to certify a third-party dispute resolution process or  
6 to deny certification not later than 90 calendar days following  
7 the date the Attorney General accepts the application for  
8 certification as complete.

9 (c)(1) The Attorney General, in accordance with the time  
10 intervals prescribed pursuant to paragraph (4) of subsection  
11 (a), but at least once annually, shall review the operation and  
12 performance of each qualified third-party dispute resolution  
13 process and determine, using the information provided the  
14 Attorney General as prescribed pursuant to paragraph (4) of  
15 subsection (a) and the monitoring and inspection information  
16 described in paragraph (3) of subsection (d), whether the  
17 process is operating in substantial compliance with subsection  
18 (c) of Section 10 and this Section. If the Attorney General  
19 determines that the process is in substantial compliance, the  
20 certification shall remain in effect.

21 (2) If the Attorney General determines that the process is  
22 not in substantial compliance with subsection (c) of Section 10  
23 or this Section, the Attorney General shall issue a notice of  
24 decertification to the entity which operates the process and  
25 shall send a copy of that notice to any manufacturer affected  
26 by the decertification. The notice of decertification shall

1 state the reasons for the issuance of the notice and prescribe  
2 the modifications in the operation of the process that are  
3 required in order for the process to retain its certification.

4 (3) A notice of decertification shall take effect 180  
5 calendar days following the date the notice is served on the  
6 manufacturer, or other entity, which uses the process that the  
7 Attorney General has determined is not in substantial  
8 compliance with subsection (c) of Section 10 or this Section.  
9 The Attorney General shall withdraw the notice of  
10 decertification prior to its effective date if the Attorney  
11 General determines, after a public hearing, that the  
12 manufacturer, or other entity, which uses the process has made  
13 the modifications in the operation of the process required in  
14 the notice of decertification and is in substantial compliance  
15 with subsection (c) of Section 10 and this Section.

16 (d) In addition to any other requirements of this Section,  
17 the Attorney General shall do all of the following:

18 (1) Establish procedures to assist owners or lessees of  
19 new motor vehicles who have complaints regarding the  
20 operation of a qualified third-party dispute resolution  
21 process.

22 (2) Establish methods for measuring customer  
23 satisfaction and to identify violations of this Section,  
24 which shall include an annual random postcard or telephone  
25 survey by the Attorney General of the customers of each  
26 qualified third-party dispute resolution process.



1           (3) Monitor and inspect, on a regular basis, qualified  
2 third-party dispute resolution processes to determine  
3 whether they continue to meet the standards for  
4 certification. Monitoring and inspection shall include,  
5 but not be limited to, all of the following:

6           (A) Onsite inspections of each qualified  
7 third-party dispute resolution process not less  
8 frequently than twice annually.

9           (B) Investigation of complaints from consumers  
10 regarding the operation of qualified third-party  
11 dispute resolution processes and analyses of  
12 representative samples of complaints against each  
13 process.

14           (C) Analyses of the annual surveys required by  
15 paragraph (2).

16           (5) Submit a biennial report to the General Assembly  
17 evaluating the effectiveness of this Section, make  
18 available to the public summaries of the statistics and  
19 other information supplied by each qualified third-party  
20 dispute resolution process, and publish educational  
21 materials regarding the purposes of this Section.

22           (6) Adopt rules as necessary and appropriate to  
23 implement this Section and subsection (c) of Section 10.

24           (7) Protection of the public shall be the highest  
25 priority for the Attorney General in exercising its  
26 certification, regulatory, and disciplinary functions.

1           Whenever the protection of the public is inconsistent with  
2           other interests sought to be promoted, the protection of  
3           the public shall be paramount.

4           (e) The Secretary of State shall, in accordance with the  
5           procedures prescribed in this subsection, administer the  
6           collection of fees for the purposes of fully funding the  
7           administration of this subsection.

8           (1) Fees collected pursuant to this subsection shall be  
9           deposited into the Motor Vehicle Dispute Resolution  
10          Certification Fund, a special fund created in the State  
11          treasury, and shall be available, upon appropriation by the  
12          General Assembly, exclusively to pay the expenses incurred  
13          by the Attorney General in administering this Section. If,  
14          at the conclusion of any fiscal year, the amount of fees  
15          collected exceeds the amount of expenditures for that  
16          purpose during that fiscal year, the surplus in the Dispute  
17          Resolution Certification Fund shall be carried forward  
18          into the succeeding fiscal year.

19          (2) Beginning July 1, 2018, and on or before May 1 of  
20          each calendar year thereafter, every manufacturer shall  
21          file with the Secretary of State a statement of the number  
22          of motor vehicles sold, leased, or otherwise distributed by  
23          or for the manufacturer in this State during the preceding  
24          calendar year, and shall, upon written notice delivered to  
25          the manufacturer by certified mail, return receipt  
26          requested, pay to the Secretary of State a fee, not to

1           exceed \$1 for each motor vehicle sold, leased, or  
2           distributed by or for the manufacturer in this State during  
3           the preceding calendar year. The total fee paid by each  
4           manufacturer shall be rounded to the nearest dollar. Not  
5           more than one dollar \$1 shall be charged, collected, or  
6           received from any one or more manufacturers pursuant to  
7           this subsection with respect to the same motor vehicle.

8           (3) The fee required by paragraph (2) is due and  
9           payable not later than 30 days after the manufacturer has  
10          received notice of the amount due and is delinquent after  
11          that time. A penalty of 10% of the amount delinquent shall  
12          be added to that amount, if the delinquency continues for  
13          more than 30 days. If a manufacturer fails to file the  
14          statement required by paragraph (2) by the date specified,  
15          the Secretary of State shall assess the amount due from the  
16          manufacturer by using as the number of motor vehicles sold,  
17          leased, or otherwise distributed by or for the manufacturer  
18          in this State during the preceding calendar year the total  
19          number of new registrations of all motor vehicles sold,  
20          leased, or otherwise distributed by or for the manufacturer  
21          during the preceding calendar year.

22          (4) On or before February 1 of each year, the Attorney  
23          General shall notify the Secretary of State of the dollar  
24          amount necessary to fully fund the program established by  
25          this Section during the following fiscal year. The  
26          Secretary of State shall use this information in

1 calculating the amounts of the fees to be collected from  
2 manufacturers pursuant to this subsection.

3 (5) The Secretary of State may adopt rules to implement  
4 this subsection. The rules shall include, at a minimum, a  
5 formula for calculating the fee, established pursuant to  
6 paragraph (2), for each motor vehicle and the total amount  
7 of fees to be collected from each manufacturer.

8 As used in this subsection, "motor vehicle" means a new  
9 passenger or commercial motor vehicle of a kind that is  
10 required to be registered under the Illinois Vehicle Code, but  
11 the term does not include a motorcycle, a motor home, or any  
12 vehicle whose gross weight exceeds 10,000 pounds.

13 Section 40. Sales and use tax reimbursement.

14 (a) Notwithstanding any applicable provisions imposing a  
15 tax amount on manufacturers under the Retailers' Occupation Tax  
16 Act, the Use Tax Act, the Service Occupation Tax Act, or the  
17 Service Use Tax Act, the Department of Revenue shall reimburse  
18 the manufacturer of a new motor vehicle for an amount equal to  
19 the sales tax or use tax which the manufacturer pays to or for  
20 the buyer or lessee when providing a replacement vehicle  
21 pursuant to paragraph (1) of Section 5 or includes in making  
22 restitution to the buyer or lessee pursuant to paragraph (2) of  
23 Section 5 when the manufacturer provides satisfactory proof  
24 that it has complied with subsection (c) of Section 15, and  
25 satisfactory proof is provided for one of the following:

1           (1) The retailer of the motor vehicle for which the  
2 manufacturer is making restitution has reported and paid  
3 the sales tax on the gross receipts from the sale of that  
4 motor vehicle.

5           (2) The buyer of the motor vehicle has paid the use tax  
6 on the sales price for the storage, use, or other  
7 consumption of that motor vehicle in this State.

8           (3) The lessee of the motor vehicle has paid the use  
9 tax on the rentals payable from the lease of that motor  
10 vehicle.

11           (b) The Department of Revenue may adopt rules and  
12 regulations to carry out, facilitate compliance with, or  
13 prevent circumvention or evasion of this Section.

14           (c) This Section shall not change the application of the  
15 sales and use tax to the gross receipts, the rentals payable,  
16 and the sales price from the sale, lease, and the storage, use,  
17 or other consumption, in this State, of tangible personal  
18 property pursuant to the Retailers' Occupation Tax Act, the Use  
19 Tax Act, the Service Occupation Tax Act, or the Service Use Tax  
20 Act.

21           (d) The manufacturer's claim for reimbursement and the  
22 Department of Revenue's approval or denial of the claim shall  
23 be subject to the applicable provisions under the Retailers'  
24 Occupation Tax Act, the Use Tax Act, the Service Occupation Tax  
25 Act, or the Service Use Tax Act concerning claims for a credit  
26 or refund of erroneously paid amounts, except provisions

1 relating to accrued interest at the rate and in the manner  
2 specified in the Uniform Penalty and Interest Act, insofar as  
3 those provisions are not inconsistent with this Section.

4 (e) For purposes of this Section, the amount of use tax  
5 that the Department of Revenue is required to reimburse the  
6 manufacturer shall be limited to the amount of use tax the  
7 manufacturer is required to pay to or for the lessee pursuant  
8 to Section 5.

9 Section 45. Prohibitions.

10 (a) Any automobile manufacturer, importer, distributor,  
11 dealer, or lienholder who reacquires, or who assists in  
12 reacquiring, a motor vehicle, whether by judgment, decree,  
13 arbitration award, settlement agreement, or voluntary  
14 agreement, is prohibited from doing either of the following:

15 (1) Requiring, as a condition of the reacquisition of  
16 the motor vehicle, that a buyer or lessee who is a resident  
17 of this State agree not to disclose the problems with the  
18 vehicle experienced by the buyer or lessee or the  
19 nonfinancial terms of the reacquisition.

20 (2) Including, in any release or other agreement,  
21 whether prepared by the manufacturer, importer,  
22 distributor, dealer, or lienholder, for signature by the  
23 buyer or lessee, a confidentiality clause, gag clause, or  
24 similar clause prohibiting the buyer or lessee from  
25 disclosing information to anyone about the problems with

1 the vehicle, or the nonfinancial terms of the reacquisition  
2 of the vehicle by the manufacturer, importer, distributor,  
3 dealer, or lienholder.

4 (b) Any confidentiality clause, gag clause, or similar  
5 clause in such a release or other agreement in violation of  
6 this Section shall be null and void as against the public  
7 policy of this State.

8 (c) Nothing in this Section is intended to prevent any  
9 confidentiality clause, gag clause, or similar clause  
10 regarding the financial terms of the reacquisition of the  
11 vehicle.

12 Section 900. The State Finance Act is amended by adding  
13 Section 5.878 as follows:

14 (30 ILCS 105/5.878 new)

15 Sec. 5.878. Motor Vehicle Dispute Resolution Certification  
16 Fund.

17 Section 905. The Retailers' Occupation Tax Act is amended  
18 by changing Section 6 as follows:

19 (35 ILCS 120/6) (from Ch. 120, par. 445)

20 Sec. 6. Credit memorandum or refund. If it appears, after  
21 claim therefor filed with the Department, that an amount of tax  
22 or penalty or interest has been paid which was not due under

1 this Act, whether as the result of a mistake of fact or an  
2 error of law, except as hereinafter provided, then the  
3 Department shall issue a credit memorandum or refund to the  
4 person who made the erroneous payment or, if that person died  
5 or became a person under legal disability, to his or her legal  
6 representative, as such. For purposes of this Section, the tax  
7 is deemed to be erroneously paid by a retailer when the  
8 manufacturer of a motor vehicle sold by the retailer accepts  
9 the return of that automobile and refunds to the purchaser the  
10 selling price of that vehicle as provided in the New Vehicle  
11 Buyer Protection Act of 2017. When a motor vehicle is returned  
12 for a refund of the purchase price under the New Vehicle Buyer  
13 Protection Act of 2017, the Department shall issue a credit  
14 memorandum or a refund for the amount of tax paid by the  
15 retailer under this Act attributable to the initial sale of  
16 that vehicle. Claims submitted by the retailer are subject to  
17 the same restrictions and procedures provided for in this Act.  
18 If it is determined that the Department should issue a credit  
19 memorandum or refund, the Department may first apply the amount  
20 thereof against any tax or penalty or interest due or to become  
21 due under this Act or under the Use Tax Act, the Service  
22 Occupation Tax Act, the Service Use Tax Act, any local  
23 occupation or use tax administered by the Department, Section 4  
24 of the Water Commission Act of 1985, subsections (b), (c) and  
25 (d) of Section 5.01 of the Local Mass Transit District Act, or  
26 subsections (e), (f) and (g) of Section 4.03 of the Regional



1 Transportation Authority Act, from the person who made the  
2 erroneous payment. If no tax or penalty or interest is due and  
3 no proceeding is pending to determine whether such person is  
4 indebted to the Department for tax or penalty or interest, the  
5 credit memorandum or refund shall be issued to the claimant; or  
6 (in the case of a credit memorandum) the credit memorandum may  
7 be assigned and set over by the lawful holder thereof, subject  
8 to reasonable rules of the Department, to any other person who  
9 is subject to this Act, the Use Tax Act, the Service Occupation  
10 Tax Act, the Service Use Tax Act, any local occupation or use  
11 tax administered by the Department, Section 4 of the Water  
12 Commission Act of 1985, subsections (b), (c) and (d) of Section  
13 5.01 of the Local Mass Transit District Act, or subsections  
14 (e), (f) and (g) of Section 4.03 of the Regional Transportation  
15 Authority Act, and the amount thereof applied by the Department  
16 against any tax or penalty or interest due or to become due  
17 under this Act or under the Use Tax Act, the Service Occupation  
18 Tax Act, the Service Use Tax Act, any local occupation or use  
19 tax administered by the Department, Section 4 of the Water  
20 Commission Act of 1985, subsections (b), (c) and (d) of Section  
21 5.01 of the Local Mass Transit District Act, or subsections  
22 (e), (f) and (g) of Section 4.03 of the Regional Transportation  
23 Authority Act, from such assignee. However, as to any claim for  
24 credit or refund filed with the Department on and after each  
25 January 1 and July 1 no amount of tax or penalty or interest  
26 erroneously paid (either in total or partial liquidation of a

1 tax or penalty or amount of interest under this Act) more than  
2 3 years prior to such January 1 and July 1, respectively, shall  
3 be credited or refunded, except that if both the Department and  
4 the taxpayer have agreed to an extension of time to issue a  
5 notice of tax liability as provided in Section 4 of this Act,  
6 such claim may be filed at any time prior to the expiration of  
7 the period agreed upon.

8 No claim may be allowed for any amount paid to the  
9 Department, whether paid voluntarily or involuntarily, if paid  
10 in total or partial liquidation of an assessment which had  
11 become final before the claim for credit or refund to recover  
12 the amount so paid is filed with the Department, or if paid in  
13 total or partial liquidation of a judgment or order of court.  
14 No credit may be allowed or refund made for any amount paid by  
15 or collected from any claimant unless it appears (a) that the  
16 claimant bore the burden of such amount and has not been  
17 relieved thereof nor reimbursed therefor and has not shifted  
18 such burden directly or indirectly through inclusion of such  
19 amount in the price of the tangible personal property sold by  
20 him or her or in any manner whatsoever; and that no  
21 understanding or agreement, written or oral, exists whereby he  
22 or she or his or her legal representative may be relieved of  
23 the burden of such amount, be reimbursed therefor or may shift  
24 the burden thereof; or (b) that he or she or his or her legal  
25 representative has repaid unconditionally such amount to his or  
26 her vendee (1) who bore the burden thereof and has not shifted

1 such burden directly or indirectly, in any manner whatsoever;  
2 (2) who, if he or she has shifted such burden, has repaid  
3 unconditionally such amount to his own vendee; and (3) who is  
4 not entitled to receive any reimbursement therefor from any  
5 other source than from his or her vendor, nor to be relieved of  
6 such burden in any manner whatsoever. No credit may be allowed  
7 or refund made for any amount paid by or collected from any  
8 claimant unless it appears that the claimant has  
9 unconditionally repaid, to the purchaser, any amount collected  
10 from the purchaser and retained by the claimant with respect to  
11 the same transaction under the Use Tax Act.

12 Any credit or refund that is allowed under this Section  
13 shall bear interest at the rate and in the manner specified in  
14 the Uniform Penalty and Interest Act.

15 In case the Department determines that the claimant is  
16 entitled to a refund, such refund shall be made only from such  
17 appropriation as may be available for that purpose. If it  
18 appears unlikely that the amount appropriated would permit  
19 everyone having a claim allowed during the period covered by  
20 such appropriation to elect to receive a cash refund, the  
21 Department, by rule or regulation, shall provide for the  
22 payment of refunds in hardship cases and shall define what  
23 types of cases qualify as hardship cases.

24 If a retailer who has failed to pay retailers' occupation  
25 tax on gross receipts from retail sales is required by the  
26 Department to pay such tax, such retailer, without filing any

1 formal claim with the Department, shall be allowed to take  
2 credit against such retailers' occupation tax liability to the  
3 extent, if any, to which such retailer has paid an amount  
4 equivalent to retailers' occupation tax or has paid use tax in  
5 error to his or her vendor or vendors of the same tangible  
6 personal property which such retailer bought for resale and did  
7 not first use before selling it, and no penalty or interest  
8 shall be charged to such retailer on the amount of such credit.  
9 However, when such credit is allowed to the retailer by the  
10 Department, the vendor is precluded from refunding any of that  
11 tax to the retailer and filing a claim for credit or refund  
12 with respect thereto with the Department. The provisions of  
13 this amendatory Act shall be applied retroactively, regardless  
14 of the date of the transaction.

15 (Source: P.A. 91-901, eff. 1-1-01.)

16 Section 910. The Illinois Vehicle Code is amended by  
17 changing Section 5-104.2 as follows:

18 (625 ILCS 5/5-104.2)

19 Sec. 5-104.2. Nonconforming vehicles; sale.

20 (a) Every manufacturer shall be prohibited from reselling  
21 any motor vehicle that has been finally ordered, determined, or  
22 adjudicated as having a nonconformity under the New Vehicle  
23 Buyer Protection Act, the New Vehicle Buyer Protection Act of  
24 2017, or a similar law of any state, territory, or country, and

1 that the manufacturer repurchased or replaced because of the  
2 nonconformity, unless the manufacturer has corrected the  
3 nonconformity and issues a disclosure statement prior to resale  
4 stating that the vehicle was repurchased or replaced under the  
5 New Vehicle Buyer Protection Act, the New Vehicle Buyer  
6 Protection Act of 2017, or similar law of any other state,  
7 territory, or country; identifying the nonconformity; and  
8 warranting that the nonconformity has been corrected. The  
9 disclosure statement must accompany the vehicle through the  
10 first retail purchase.

11 (b) "Nonconformity" refers to a new vehicle's failure to  
12 conform to all express warranties applicable to the vehicle,  
13 which failure substantially impairs the use, market value, or  
14 safety of the vehicle.

15 (c) The disclosure statement referred to in subsection (a)  
16 shall be in substantially the same form as below:

17 "IMPORTANT

18 Vehicle Identification Number (VIN): (Insert VIN Number);  
19 Year: (Insert Year); Make (Insert Make); Model: (Insert  
20 Model). This vehicle was previously sold as new. It was  
21 subsequently ordered as having a nonconformity by final  
22 decision of court proceeding or State run arbitration. It  
23 was subsequently repurchased by its manufacturer because  
24 it did not conform to the manufacturer's express warranty  
25 and the nonconformity was not cured within a reasonable  
26 time as provided by Illinois law. The following

1 nonconformities have been corrected (a minimum of 5  
2 numbered lines shall be provided to describe the  
3 nonconformity or nonconformities)."

4 The customer shall sign the disclosure statement. This  
5 disclosure language shall be in at least 8-point type.

6 (Source: P.A. 88-415.)

7 (815 ILCS 380/Act rep.)

8 Section 915. The New Vehicle Buyer Protection Act is  
9 repealed.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 30 ILCS 105/5.878 new

5 35 ILCS 120/6 from Ch. 120, par. 445

6 625 ILCS 5/5-104.2

7 815 ILCS 380/Act rep.