

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 5. The Motor Vehicle Franchise Act is amended by  
5 changing Sections 1.1, 2, 4, and 12 as follows:

6 (815 ILCS 710/1.1) (from Ch. 121 1/2, par. 751.1)

7 Sec. 1.1. Declaration of purpose. The Legislature finds and  
8 declares that the distribution and sale of vehicles within this  
9 State vitally affects the general economy of the State and the  
10 public interest, and welfare, and safety and that in order to  
11 promote the public interest, and welfare, and safety, and in  
12 the exercise of its police power, it is necessary to regulate  
13 motor vehicle manufacturers, distributors, wholesalers and  
14 factory or distributor branches or representatives, and to  
15 regulate dealers of motor vehicles doing business in this State  
16 in order to prevent frauds, impositions, discrimination, and  
17 other abuses upon its citizens, to protect and preserve the  
18 investments and properties of the citizens of this State, to  
19 foster healthy competition, and to provide adequate and  
20 sufficient service to consumers generally. The licensing and  
21 supervision of motor vehicle dealers is necessary for the  
22 protection of consumers and the sale of motor vehicles by  
23 unlicensed dealers should be prevented.

1       The Legislature further finds that the regulation of motor  
2 vehicle manufacturers, distributors, wholesalers, factory  
3 branches, distributor branches and representatives, and  
4 dealers promotes the distribution of motor vehicles to the  
5 public and provides a system for servicing vehicles and for  
6 complying with manufacturer warranties so that consumers can  
7 keep their motor vehicles properly functioning and safe. The  
8 sale and distribution of motor vehicles constitutes a  
9 continuing obligation of manufacturers, distributors,  
10 wholesalers, factory branches, distributor branches and  
11 representatives, and dealers to consumers, and the public has  
12 an interest in promoting the availability of post-sale  
13 mechanical and operational services.

14       (Source: P.A. 83-922.)

15       (815 ILCS 710/2) (from Ch. 121 1/2, par. 752)

16       Sec. 2. Definitions. As used in this Act, the following  
17 words shall, unless the context otherwise requires, have the  
18 following meanings:

19       (a) "Motor vehicle", any motor driven vehicle required to  
20 be registered under "The Illinois Vehicle Code". Beginning  
21 January 1, 2010, the term "motor vehicle" also includes any  
22 engine, transmission, or rear axle, regardless of whether it is  
23 attached to a vehicle chassis, that is manufactured for  
24 installation in any motor-driven vehicle with a gross vehicle  
25 weight rating of more than 16,000 pounds that is required to be

1 registered under the Illinois Vehicle Code.

2 (b) "Manufacturer", any person engaged in the business of  
3 manufacturing or assembling new and unused motor vehicles.  
4 "Manufacturer" includes a factory branch, distributor, and  
5 distributor branch.

6 (c) "Factory branch", a branch office maintained by a  
7 manufacturer which manufactures or assembles motor vehicles  
8 for sale to distributors or motor vehicle dealers or which is  
9 maintained for directing and supervising the representatives  
10 of the manufacturer.

11 (d) "Distributor branch", a branch office maintained by a  
12 distributor or wholesaler who or which sells or distributes new  
13 or used motor vehicles to motor vehicle dealers.

14 (e) "Factory representative", a representative employed by  
15 a manufacturer or employed by a factory branch for the purpose  
16 of making or promoting the sale of motor vehicles or for  
17 contracting with, supervising, servicing or instructing motor  
18 vehicle dealers or prospective motor vehicle dealers.

19 (f) "Distributor representative", a representative  
20 employed by a distributor branch, distributor or wholesaler.

21 (g) "Distributor" or "wholesaler", any person who sells or  
22 distributes new or used motor vehicles to motor vehicle dealers  
23 or who maintains distributor representatives within the State.

24 (h) "Motor vehicle dealer", any person who, in the ordinary  
25 course of business, is engaged in the business of selling new  
26 or used motor vehicles to consumers or other end users.

1 (i) "Franchise", an oral or written arrangement for a  
2 definite or indefinite period in which a manufacturer,  
3 distributor or wholesaler grants to a motor vehicle dealer a  
4 license to use a trade name, service mark, or related  
5 characteristic, and in which there is a community of interest  
6 in the marketing of motor vehicles or services related thereto  
7 at wholesale, retail, leasing or otherwise.

8 (j) "Franchiser", a manufacturer, distributor or  
9 wholesaler who grants a franchise to a motor vehicle dealer.

10 (k) "Franchisee", a motor vehicle dealer to whom a  
11 franchise is offered or granted.

12 (l) "Sale", shall include the issuance, transfer,  
13 agreement for transfer, exchange, pledge, hypothecation,  
14 mortgage in any form, whether by transfer in trust or  
15 otherwise, of any motor vehicle or interest therein or of any  
16 franchise related thereto; and any option, subscription or  
17 other contract or solicitation, looking to a sale, or offer or  
18 attempt to sell in any form, whether oral or written. A gift or  
19 delivery of any motor vehicle or franchise with respect thereto  
20 with or as a bonus on account of the sale of anything shall be  
21 deemed a sale of such motor vehicle or franchise.

22 (m) "Fraud", shall include, in addition to its normal legal  
23 connotation, the following: a misrepresentation in any manner,  
24 whether intentionally false or due to reckless disregard for  
25 truth or falsity, of a material fact; a promise or  
26 representation not made honestly and in good faith; and an

1 intentional failure to disclose a material fact.

2 (n) "Person", a natural person, corporation, partnership,  
3 trust or other entity, and in case of an entity, it shall  
4 include any other entity in which it has a majority interest or  
5 which it effectively controls as well as the individual  
6 officers, directors and other persons in active control of the  
7 activities of each such entity.

8 (o) "New motor vehicle", a motor vehicle which has not been  
9 previously sold to any person except a distributor or  
10 wholesaler or motor vehicle dealer for resale.

11 (p) "Market Area", the franchisee's area of primary  
12 responsibility as defined in its franchise.

13 (q) "Relevant Market Area", the area within a radius of 10  
14 miles from the principal location of a franchise or dealership  
15 if said principal location is in a county having a population  
16 of more than 300,000 persons; if the principal location of a  
17 franchise or dealership is in a county having a population of  
18 less than 300,000 persons, then "relevant market area" shall  
19 mean the area within a radius of 15 miles from the principal  
20 location of said franchise or dealership.

21 (r) "Late model vehicle" means a vehicle of the current  
22 model year and one, 2, or 3 preceding model years for which the  
23 motor vehicle dealer holds an existing franchise from the  
24 manufacturer for that same line make.

25 (s) "Factory repurchase vehicle" means a motor vehicle of  
26 the current model year or a late model vehicle reacquired by

1 the manufacturer under an existing agreement or otherwise from  
2 a fleet, lease or daily rental company or under any State or  
3 federal law or program relating to allegedly defective new  
4 motor vehicles, and offered for sale and resold by the  
5 manufacturer directly or at a factory authorized or sponsored  
6 auction.

7 (t) "Board" means the Motor Vehicle Review Board created  
8 under this Act.

9 (u) "Secretary of State" means the Secretary of State of  
10 Illinois.

11 (v) "Good cause" means facts establishing commercial  
12 reasonableness in lawful or privileged competition and  
13 business practices as defined at common law.

14 (Source: P.A. 95-678, eff. 10-11-07; 96-11, eff. 5-22-09.)

15 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

16 Sec. 4. Unfair competition and practices.

17 (a) The unfair methods of competition and unfair and  
18 deceptive acts or practices listed in this Section are hereby  
19 declared to be unlawful. In construing the provisions of this  
20 Section, the courts may be guided by the interpretations of the  
21 Federal Trade Commission Act (15 U.S.C. 45 et seq.), as from  
22 time to time amended.

23 (b) It shall be deemed a violation for any manufacturer,  
24 factory branch, factory representative, distributor or  
25 wholesaler, distributor branch, distributor representative or

1 motor vehicle dealer to engage in any action with respect to a  
2 franchise which is arbitrary, in bad faith or unconscionable  
3 and which causes damage to any of the parties or to the public.

4 (c) It shall be deemed a violation for a manufacturer, a  
5 distributor, a wholesaler, a distributor branch or division, a  
6 factory branch or division, or a wholesale branch or division,  
7 or officer, agent or other representative thereof, to coerce,  
8 or attempt to coerce, any motor vehicle dealer:

9 (1) to accept, buy or order any motor vehicle or  
10 vehicles, appliances, equipment, parts or accessories  
11 therefor, or any other commodity or commodities or service  
12 or services which such motor vehicle dealer has not  
13 voluntarily ordered or requested except items required by  
14 applicable local, state or federal law; or to require a  
15 motor vehicle dealer to accept, buy, order or purchase such  
16 items in order to obtain any motor vehicle or vehicles or  
17 any other commodity or commodities which have been ordered  
18 or requested by such motor vehicle dealer;

19 (2) to order or accept delivery of any motor vehicle  
20 with special features, appliances, accessories or  
21 equipment not included in the list price of the motor  
22 vehicles as publicly advertised by the manufacturer  
23 thereof, except items required by applicable law; or

24 (3) to order for anyone any parts, accessories,  
25 equipment, machinery, tools, appliances or any commodity  
26 whatsoever, except items required by applicable law.

1 (d) It shall be deemed a violation for a manufacturer, a  
2 distributor, a wholesaler, a distributor branch or division, or  
3 officer, agent or other representative thereof:

4 (1) to adopt, change, establish or implement a plan or  
5 system for the allocation and distribution of new motor  
6 vehicles to motor vehicle dealers which is arbitrary or  
7 capricious or to modify an existing plan so as to cause the  
8 same to be arbitrary or capricious;

9 (2) to fail or refuse to advise or disclose to any  
10 motor vehicle dealer having a franchise or selling  
11 agreement, upon written request therefor, the basis upon  
12 which new motor vehicles of the same line make are  
13 allocated or distributed to motor vehicle dealers in the  
14 State and the basis upon which the current allocation or  
15 distribution is being made or will be made to such motor  
16 vehicle dealer;

17 (3) to refuse to deliver in reasonable quantities and  
18 within a reasonable time after receipt of dealer's order,  
19 to any motor vehicle dealer having a franchise or selling  
20 agreement for the retail sale of new motor vehicles sold or  
21 distributed by such manufacturer, distributor, wholesaler,  
22 distributor branch or division, factory branch or division  
23 or wholesale branch or division, any such motor vehicles as  
24 are covered by such franchise or selling agreement  
25 specifically publicly advertised in the State by such  
26 manufacturer, distributor, wholesaler, distributor branch



1 or division, factory branch or division, or wholesale  
2 branch or division to be available for immediate delivery.  
3 However, the failure to deliver any motor vehicle shall not  
4 be considered a violation of this Act if such failure is  
5 due to an act of God, a work stoppage or delay due to a  
6 strike or labor difficulty, a shortage of materials, a lack  
7 of manufacturing capacity, a freight embargo or other cause  
8 over which the manufacturer, distributor, or wholesaler,  
9 or any agent thereof has no control;

10 (4) to coerce, or attempt to coerce, any motor vehicle  
11 dealer to enter into any agreement with such manufacturer,  
12 distributor, wholesaler, distributor branch or division,  
13 factory branch or division, or wholesale branch or  
14 division, or officer, agent or other representative  
15 thereof, or to do any other act prejudicial to the dealer  
16 by threatening to reduce his allocation of motor vehicles  
17 or cancel any franchise or any selling agreement existing  
18 between such manufacturer, distributor, wholesaler,  
19 distributor branch or division, or factory branch or  
20 division, or wholesale branch or division, and the dealer.  
21 However, notice in good faith to any motor vehicle dealer  
22 of the dealer's violation of any terms or provisions of  
23 such franchise or selling agreement or of any law or  
24 regulation applicable to the conduct of a motor vehicle  
25 dealer shall not constitute a violation of this Act;

26 (5) to require a franchisee to participate in an

1 advertising campaign or contest or any promotional  
2 campaign, or to purchase or lease any promotional  
3 materials, training materials, show room or other display  
4 decorations or materials at the expense of the franchisee;

5 (6) to cancel or terminate the franchise or selling  
6 agreement of a motor vehicle dealer without good cause and  
7 without giving notice as hereinafter provided; to fail or  
8 refuse to extend the franchise or selling agreement of a  
9 motor vehicle dealer upon its expiration without good cause  
10 and without giving notice as hereinafter provided; or, to  
11 offer a renewal, replacement or succeeding franchise or  
12 selling agreement containing terms and provisions the  
13 effect of which is to substantially change or modify the  
14 sales and service obligations or capital requirements of  
15 the motor vehicle dealer arbitrarily and without good cause  
16 and without giving notice as hereinafter provided  
17 notwithstanding any term or provision of a franchise or  
18 selling agreement.

19 (A) If a manufacturer, distributor, wholesaler,  
20 distributor branch or division, factory branch or  
21 division or wholesale branch or division intends to  
22 cancel or terminate a franchise or selling agreement or  
23 intends not to extend or renew a franchise or selling  
24 agreement on its expiration, it shall send a letter by  
25 certified mail, return receipt requested, to the  
26 affected franchisee at least 60 days before the

1 effective date of the proposed action, or not later  
2 than 10 days before the proposed action when the reason  
3 for the action is based upon either of the following:

4 (i) the business operations of the franchisee  
5 have been abandoned or the franchisee has failed to  
6 conduct customary sales and service operations  
7 during customary business hours for at least 7  
8 consecutive business days unless such closing is  
9 due to an act of God, strike or labor difficulty or  
10 other cause over which the franchisee has no  
11 control; or

12 (ii) the conviction of or plea of nolo  
13 contendere by the motor vehicle dealer or any  
14 operator thereof in a court of competent  
15 jurisdiction to an offense punishable by  
16 imprisonment for more than two years.

17 Each notice of proposed action shall include a  
18 detailed statement setting forth the specific grounds  
19 for the proposed cancellation, termination, or refusal  
20 to extend or renew and shall state that the dealer has  
21 only 30 days from receipt of the notice to file with  
22 the Motor Vehicle Review Board a written protest  
23 against the proposed action.

24 (B) If a manufacturer, distributor, wholesaler,  
25 distributor branch or division, factory branch or  
26 division or wholesale branch or division intends to

1 change substantially or modify the sales and service  
2 obligations or capital requirements of a motor vehicle  
3 dealer as a condition to extending or renewing the  
4 existing franchise or selling agreement of such motor  
5 vehicle dealer, it shall send a letter by certified  
6 mail, return receipt requested, to the affected  
7 franchisee at least 60 days before the date of  
8 expiration of the franchise or selling agreement. Each  
9 notice of proposed action shall include a detailed  
10 statement setting forth the specific grounds for the  
11 proposed action and shall state that the dealer has  
12 only 30 days from receipt of the notice to file with  
13 the Motor Vehicle Review Board a written protest  
14 against the proposed action.

15 (C) Within 30 days from receipt of the notice under  
16 subparagraphs (A) and (B), the franchisee may file with  
17 the Board a written protest against the proposed  
18 action.

19 When the protest has been timely filed, the Board  
20 shall enter an order, fixing a date (within 60 days of  
21 the date of the order), time, and place of a hearing on  
22 the protest required under Sections 12 and 29 of this  
23 Act, and send by certified mail, return receipt  
24 requested, a copy of the order to the manufacturer that  
25 filed the notice of intention of the proposed action  
26 and to the protesting dealer or franchisee.

1           The manufacturer shall have the burden of proof to  
2           establish that good cause exists to cancel or  
3           terminate, or fail to extend or renew the franchise or  
4           selling agreement of a motor vehicle dealer or  
5           franchisee, and to change substantially or modify the  
6           sales and service obligations or capital requirements  
7           of a motor vehicle dealer as a condition to extending  
8           or renewing the existing franchise or selling  
9           agreement. The determination whether good cause exists  
10          to cancel, terminate, or refuse to renew or extend the  
11          franchise or selling agreement, or to change or modify  
12          the obligations of the dealer as a condition to offer  
13          renewal, replacement, or succession shall be made by  
14          the Board under subsection (d) of Section 12 of this  
15          Act.

16           (D) Notwithstanding the terms, conditions, or  
17          provisions of a franchise or selling agreement, the  
18          following shall not constitute good cause for  
19          cancelling or terminating or failing to extend or renew  
20          the franchise or selling agreement: (i) the change of  
21          ownership or executive management of the franchisee's  
22          dealership; or (ii) the fact that the franchisee or  
23          owner of an interest in the franchise owns, has an  
24          investment in, participates in the management of, or  
25          holds a license for the sale of the same or any other  
26          line make of new motor vehicles.

1           (E) The manufacturer may not cancel or terminate,  
2           or fail to extend or renew a franchise or selling  
3           agreement or change or modify the obligations of the  
4           franchisee as a condition to offering a renewal,  
5           replacement, or succeeding franchise or selling  
6           agreement before the hearing process is concluded as  
7           prescribed by this Act, and thereafter, if the Board  
8           determines that the manufacturer has failed to meet its  
9           burden of proof and that good cause does not exist to  
10          allow the proposed action;

11          (7) notwithstanding the terms of any franchise  
12          agreement, to fail to indemnify and hold harmless its  
13          franchised dealers against any judgment or settlement for  
14          damages, including, but not limited to, court costs, expert  
15          witness fees, reasonable attorneys' fees of the new motor  
16          vehicle dealer, and other expenses incurred in the  
17          litigation, so long as such fees and costs are reasonable,  
18          arising out of complaints, claims or lawsuits including,  
19          but not limited to, strict liability, negligence,  
20          misrepresentation, warranty (express or implied), or  
21          rescission ~~recession~~ of the sale as defined in Section 2-608  
22          of the Uniform Commercial Code, to the extent that the  
23          judgment or settlement relates to the alleged defective or  
24          negligent manufacture, assembly or design of new motor  
25          vehicles, parts or accessories or other functions by the  
26          manufacturer, beyond the control of the dealer; provided

1 that, in order to provide an adequate defense, the  
2 manufacturer receives notice of the filing of a complaint,  
3 claim, or lawsuit within 60 days after the filing;

4 (8) to require or otherwise coerce a motor vehicle  
5 dealer to underutilize the motor vehicle dealer's  
6 facilities by requiring or otherwise coercing the motor  
7 vehicle dealer to exclude or remove from the motor vehicle  
8 dealer's facilities operations for selling or servicing of  
9 any vehicles for which the motor vehicle dealer has a  
10 franchise agreement with another manufacturer,  
11 distributor, wholesaler, distribution branch or division,  
12 or officer, agent, or other representative thereof;  
13 provided, however, that, in light of all existing  
14 circumstances, (i) the motor vehicle dealer maintains a  
15 reasonable line of credit for each make or line of new  
16 motor vehicle, (ii) the new motor vehicle dealer remains in  
17 compliance with any reasonable facilities requirements of  
18 the manufacturer, (iii) no change is made in the principal  
19 management of the new motor vehicle dealer, and (iv) the  
20 addition of the make or line of new motor vehicles would be  
21 reasonable. The reasonable facilities requirement set  
22 forth in item (ii) of subsection (d)(8) shall not include  
23 any requirement that a franchisee establish or maintain  
24 exclusive facilities, personnel, or display space. Any  
25 decision by a motor vehicle dealer to sell additional makes  
26 or lines at the motor vehicle dealer's facility shall be

1       presumed to be reasonable, and the manufacturer shall have  
2       the burden to overcome that presumption. A motor vehicle  
3       dealer must provide a written notification of its intent to  
4       add a make or line of new motor vehicles to the  
5       manufacturer. If the manufacturer does not respond to the  
6       motor vehicle dealer, in writing, objecting to the addition  
7       of the make or line within 60 days after the date that the  
8       motor vehicle dealer sends the written notification, then  
9       the manufacturer shall be deemed to have approved the  
10      addition of the make or line; ~~or~~

11           (9) to use or consider the performance of a motor  
12      vehicle dealer relating to the sale of the manufacturer's,  
13      distributor's, or wholesaler's vehicles or the motor  
14      vehicle dealer's ability to satisfy any minimum sales or  
15      market share quota or responsibility relating to the sale  
16      of the manufacturer's, distributor's, or wholesaler's new  
17      vehicles in determining:

18           (A) the motor vehicle dealer's eligibility to  
19      purchase program, certified, or other used motor  
20      vehicles from the manufacturer, distributor, or  
21      wholesaler;

22           (B) the volume, type, or model of program,  
23      certified, or other used motor vehicles that a motor  
24      vehicle dealer is eligible to purchase from the  
25      manufacturer, distributor, or wholesaler;

26           (C) the price of any program, certified, or other



1 used motor vehicle that the dealer is eligible to  
2 purchase from the manufacturer, distributor, or  
3 wholesaler; or

4 (D) the availability or amount of any discount,  
5 credit, rebate, or sales incentive that the dealer is  
6 eligible to receive from the manufacturer,  
7 distributor, or wholesaler for the purchase of any  
8 program, certified, or other used motor vehicle  
9 offered for sale by the manufacturer, distributor, or  
10 wholesaler;=

11 (10) to take any adverse action against a dealer  
12 pursuant to an export or sale-for-resale prohibition  
13 because the dealer sold or leased a vehicle to a customer  
14 who either exported the vehicle to a foreign country or  
15 resold the vehicle in violation of the prohibition, unless  
16 the export or sale-for-resale prohibition policy was  
17 provided to the dealer in writing either electronically or  
18 on paper, prior to the sale or lease, and the dealer knew  
19 or reasonably should have known of the customer's intent to  
20 export or resell the vehicle in violation of the  
21 prohibition at the time of the sale or lease. If the dealer  
22 causes the vehicle to be registered and titled in this or  
23 any other state, and collects or causes to be collected any  
24 applicable sales or use tax to this State, a rebuttable  
25 presumption is established that the dealer did not have  
26 reason to know of the customer's intent to resell the

1       vehicle;

2           (11) to coerce or require any dealer to construct  
3       improvements to his or her facilities or to install new  
4       signs or other franchiser image elements that replace or  
5       substantially alter those improvements, signs, or  
6       franchiser image elements completed within the past 10  
7       years that were required and approved by the manufacturer  
8       or one of its affiliates. The 10-year period under this  
9       paragraph (11) begins to run for a dealer, including that  
10       dealer's successors and assigns, on the date that the  
11       manufacturer gives final written approval of the facility  
12       improvements or installation of signs or other franchiser  
13       image elements or the date that the dealer receives a  
14       certificate of occupancy, whichever is later. For the  
15       purpose of this paragraph (11), the term "substantially  
16       alter" does not include routine maintenance, including,  
17       but not limited to, interior painting, that is reasonably  
18       necessary to keep a dealer facility in attractive  
19       condition; or

20           (12) to require a dealer to purchase goods or services  
21       to make improvements to the dealer's facilities from a  
22       vendor selected, identified, or designated by a  
23       manufacturer or one of its affiliates by agreement,  
24       program, incentive provision, or otherwise without making  
25       available to the dealer the option to obtain the goods or  
26       services of substantially similar quality and overall

1 design from a vendor chosen by the dealer and approved by  
2 the manufacturer; however, approval by the manufacturer  
3 shall not be unreasonably withheld, and the dealer's option  
4 to select a vendor shall not be available if the  
5 manufacturer provides substantial reimbursement for the  
6 goods or services offered. "Substantial reimbursement"  
7 means an amount equal to or greater than the cost savings  
8 that would result if the dealer were to utilize a vendor of  
9 the dealer's own selection instead of using the vendor  
10 identified by the manufacturer. For the purpose of this  
11 paragraph (12), the term "goods" does not include movable  
12 displays, brochures, and promotional materials containing  
13 material subject to the intellectual property rights of a  
14 manufacturer. If signs, other than signs containing the  
15 manufacturer's brand or logo or free-standing signs that  
16 are not directly attached to a building, or other  
17 franchiser image or design elements or trade dress are to  
18 be leased to the dealer by a vendor selected, identified,  
19 or designated by the manufacturer, the dealer has the right  
20 to purchase the signs or other franchiser image or design  
21 elements or trade dress of substantially similar quality  
22 and design from a vendor selected by the dealer if the  
23 signs, franchiser image or design elements, or trade dress  
24 are approved by the manufacturer. Approval by the  
25 manufacturer shall not be unreasonably withheld. This  
26 paragraph (12) shall not be construed to allow a dealer or

1 vendor to impair, infringe upon, or eliminate, directly or  
2 indirectly, the intellectual property rights of the  
3 manufacturer including, but not limited to, the  
4 manufacturer's intellectual property rights in any  
5 trademarks or trade dress, or other intellectual property  
6 interests owned or controlled by the manufacturer. This  
7 paragraph (12) shall not be construed to permit a dealer to  
8 erect or maintain signs that do not conform to the  
9 manufacturer's intellectual property rights or trademark  
10 or trade dress usage guidelines.

11 (e) It shall be deemed a violation for a manufacturer, a  
12 distributor, a wholesaler, a distributor branch or division or  
13 officer, agent or other representative thereof:

14 (1) to resort to or use any false or misleading  
15 advertisement in connection with his business as such  
16 manufacturer, distributor, wholesaler, distributor branch  
17 or division or officer, agent or other representative  
18 thereof;

19 (2) to offer to sell or lease, or to sell or lease, any  
20 new motor vehicle to any motor vehicle dealer at a lower  
21 actual price therefor than the actual price offered to any  
22 other motor vehicle dealer for the same model vehicle  
23 similarly equipped or to utilize any device including, but  
24 not limited to, sales promotion plans or programs which  
25 result in such lesser actual price or fail to make  
26 available to any motor vehicle dealer any preferential

1 pricing, incentive, rebate, finance rate, or low interest  
2 loan program offered to competing motor vehicle dealers in  
3 other contiguous states. However, the provisions of this  
4 paragraph shall not apply to sales to a motor vehicle  
5 dealer for resale to any unit of the United States  
6 Government, the State or any of its political subdivisions;

7 (3) to offer to sell or lease, or to sell or lease, any  
8 new motor vehicle to any person, except a wholesaler,  
9 distributor or manufacturer's employees at a lower actual  
10 price therefor than the actual price offered and charged to  
11 a motor vehicle dealer for the same model vehicle similarly  
12 equipped or to utilize any device which results in such  
13 lesser actual price. However, the provisions of this  
14 paragraph shall not apply to sales to a motor vehicle  
15 dealer for resale to any unit of the United States  
16 Government, the State or any of its political subdivisions;

17 (4) to prevent or attempt to prevent by contract or  
18 otherwise any motor vehicle dealer or franchisee from  
19 changing the executive management control of the motor  
20 vehicle dealer or franchisee unless the franchiser, having  
21 the burden of proof, proves that such change of executive  
22 management will result in executive management control by a  
23 person or persons who are not of good moral character or  
24 who do not meet the franchiser's existing and, with  
25 consideration given to the volume of sales and service of  
26 the dealership, uniformly applied minimum business

1           experience standards in the market area. However where the  
2           manufacturer rejects a proposed change in executive  
3           management control, the manufacturer shall give written  
4           notice of his reasons to the dealer within 60 days of  
5           notice to the manufacturer by the dealer of the proposed  
6           change. If the manufacturer does not send a letter to the  
7           franchisee by certified mail, return receipt requested,  
8           within 60 days from receipt by the manufacturer of the  
9           proposed change, then the change of the executive  
10          management control of the franchisee shall be deemed  
11          accepted as proposed by the franchisee, and the  
12          manufacturer shall give immediate effect to such change;

13           (5) to prevent or attempt to prevent by contract or  
14          otherwise any motor vehicle dealer from establishing or  
15          changing the capital structure of his dealership or the  
16          means by or through which he finances the operation  
17          thereof; provided the dealer meets any reasonable capital  
18          standards agreed to between the dealer and the  
19          manufacturer, distributor or wholesaler, who may require  
20          that the sources, method and manner by which the dealer  
21          finances or intends to finance its operation, equipment or  
22          facilities be fully disclosed;

23           (6) to refuse to give effect to or prevent or attempt  
24          to prevent by contract or otherwise any motor vehicle  
25          dealer or any officer, partner or stockholder of any motor  
26          vehicle dealer from selling or transferring any part of the

1 interest of any of them to any other person or persons or  
2 party or parties unless such sale or transfer is to a  
3 transferee who would not otherwise qualify for a new motor  
4 vehicle dealers license under the ~~"The~~ Illinois Vehicle  
5 Code" or unless the franchiser, having the burden of proof,  
6 proves that such sale or transfer is to a person or party  
7 who is not of good moral character or does not meet the  
8 franchiser's existing and reasonable capital standards  
9 and, with consideration given to the volume of sales and  
10 service of the dealership, uniformly applied minimum  
11 business experience standards in the market area. However,  
12 nothing herein shall be construed to prevent a franchiser  
13 from implementing affirmative action programs providing  
14 business opportunities for minorities or from complying  
15 with applicable federal, State or local law:

16 (A) If the manufacturer intends to refuse to  
17 approve the sale or transfer of all or a part of the  
18 interest, then it shall, within 60 days from receipt of  
19 the completed application forms generally utilized by  
20 a manufacturer to conduct its review and a copy of all  
21 agreements regarding the proposed transfer, send a  
22 letter by certified mail, return receipt requested,  
23 advising the franchisee of any refusal to approve the  
24 sale or transfer of all or part of the interest and  
25 shall state that the dealer only has 30 days from the  
26 receipt of the notice to file with the Motor Vehicle

1           Review Board a written protest against the proposed  
2           action. The notice shall set forth specific criteria  
3           used to evaluate the prospective transferee and the  
4           grounds for refusing to approve the sale or transfer to  
5           that transferee. Within 30 days from the franchisee's  
6           receipt of the manufacturer's notice, the franchisee  
7           may file with the Board a written protest against the  
8           proposed action.

9           When a protest has been timely filed, the Board  
10          shall enter an order, fixing the date (within 60 days  
11          of the date of such order), time, and place of a  
12          hearing on the protest, required under Sections 12 and  
13          29 of this Act, and send by certified mail, return  
14          receipt requested, a copy of the order to the  
15          manufacturer that filed notice of intention of the  
16          proposed action and to the protesting franchisee.

17          The manufacturer shall have the burden of proof to  
18          establish that good cause exists to refuse to approve  
19          the sale or transfer to the transferee. The  
20          determination whether good cause exists to refuse to  
21          approve the sale or transfer shall be made by the Board  
22          under subdivisions (6) (B). The manufacturer shall not  
23          refuse to approve the sale or transfer by a dealer or  
24          an officer, partner, or stockholder of a franchise or  
25          any part of the interest to any person or persons  
26          before the hearing process is concluded as prescribed



1           by this Act, and thereafter if the Board determines  
2           that the manufacturer has failed to meet its burden of  
3           proof and that good cause does not exist to refuse to  
4           approve the sale or transfer to the transferee.

5           (B) Good cause to refuse to approve such sale or  
6           transfer under this Section is established when such  
7           sale or transfer is to a transferee who would not  
8           otherwise qualify for a new motor vehicle dealers  
9           license under the ~~"the~~ Illinois Vehicle Code" or such  
10          sale or transfer is to a person or party who is not of  
11          good moral character or does not meet the franchiser's  
12          existing and reasonable capital standards and, with  
13          consideration given to the volume of sales and service  
14          of the dealership, uniformly applied minimum business  
15          experience standards in the market area.

16          (7) to obtain money, goods, services, anything of  
17          value, or any other benefit from any other person with whom  
18          the motor vehicle dealer does business, on account of or in  
19          relation to the transactions between the dealer and the  
20          other person as compensation, except for services actually  
21          rendered, unless such benefit is promptly accounted for and  
22          transmitted to the motor vehicle dealer;

23          (8) to grant an additional franchise in the relevant  
24          market area of an existing franchise of the same line make  
25          or to relocate an existing motor vehicle dealership within  
26          or into a relevant market area of an existing franchise of

1 the same line make. However, if the manufacturer wishes to  
2 grant such an additional franchise to an independent person  
3 in a bona fide relationship in which such person is  
4 prepared to make a significant investment subject to loss  
5 in such a dealership, or if the manufacturer wishes to  
6 relocate an existing motor vehicle dealership, then the  
7 manufacturer shall send a letter by certified mail, return  
8 receipt requested, to each existing dealer or dealers of  
9 the same line make whose relevant market area includes the  
10 proposed location of the additional or relocated franchise  
11 at least 60 days before the manufacturer grants an  
12 additional franchise or relocates an existing franchise of  
13 the same line make within or into the relevant market area  
14 of an existing franchisee of the same line make. Each  
15 notice shall set forth the specific grounds for the  
16 proposed grant of an additional or relocation of an  
17 existing franchise and shall state that the dealer has only  
18 30 days from the date of receipt of the notice to file with  
19 the Motor Vehicle Review Board a written protest against  
20 the proposed action. Unless the parties agree upon the  
21 grant or establishment of the additional or relocated  
22 franchise within 30 days from the date the notice was  
23 received by the existing franchisee of the same line make  
24 or any person entitled to receive such notice, the  
25 franchisee or other person may file with the Board a  
26 written protest against the grant or establishment of the

1 proposed additional or relocated franchise.

2 When a protest has been timely filed, the Board shall  
3 enter an order fixing a date (within 60 days of the date of  
4 the order), time, and place of a hearing on the protest,  
5 required under Sections 12 and 29 of this Act, and send by  
6 certified or registered mail, return receipt requested, a  
7 copy of the order to the manufacturer that filed the notice  
8 of intention to grant or establish the proposed additional  
9 or relocated franchise and to the protesting dealer or  
10 dealers of the same line make whose relevant market area  
11 includes the proposed location of the additional or  
12 relocated franchise.

13 When more than one protest is filed against the grant  
14 or establishment of the additional or relocated franchise  
15 of the same line make, the Board may consolidate the  
16 hearings to expedite disposition of the matter. The  
17 manufacturer shall have the burden of proof to establish  
18 that good cause exists to allow the grant or establishment  
19 of the additional or relocated franchise. The manufacturer  
20 may not grant or establish the additional franchise or  
21 relocate the existing franchise before the hearing process  
22 is concluded as prescribed by this Act, and thereafter if  
23 the Board determines that the manufacturer has failed to  
24 meet its burden of proof and that good cause does not exist  
25 to allow the grant or establishment of the additional  
26 franchise or relocation of the existing franchise.

1           The determination whether good cause exists for  
2 allowing the grant or establishment of an additional  
3 franchise or relocated existing franchise, shall be made by  
4 the Board under subsection (c) of Section 12 of this Act.  
5 If the manufacturer seeks to enter into a contract,  
6 agreement or other arrangement with any person,  
7 establishing any additional motor vehicle dealership or  
8 other facility, limited to the sale of factory repurchase  
9 vehicles or late model vehicles, then the manufacturer  
10 shall follow the notice procedures set forth in this  
11 Section and the determination whether good cause exists for  
12 allowing the proposed agreement shall be made by the Board  
13 under subsection (c) of Section 12, with the manufacturer  
14 having the burden of proof.

15           A. (Blank).

16           B. For the purposes of this Section, appointment of  
17 a successor motor vehicle dealer at the same location  
18 as its predecessor, or within 2 miles of such location,  
19 or the relocation of an existing dealer or franchise  
20 within 2 miles of the relocating dealer's or  
21 franchisee's existing location, shall not be construed  
22 as a grant, establishment or the entering into of an  
23 additional franchise or selling agreement, or a  
24 relocation of an existing franchise. The reopening of a  
25 motor vehicle dealership that has not been in operation  
26 for 18 months or more shall be deemed the grant of an

1 additional franchise or selling agreement.

2 C. This Section does not apply to the relocation of  
3 an existing dealership or franchise in a county having  
4 a population of more than 300,000 persons when the new  
5 location is within the dealer's current relevant  
6 market area, provided the new location is more than 7  
7 miles from the nearest dealer of the same line make.  
8 This Section does not apply to the relocation of an  
9 existing dealership or franchise in a county having a  
10 population of less than 300,000 persons when the new  
11 location is within the dealer's current relevant  
12 market area, provided the new location is more than 12  
13 miles from the nearest dealer of the same line make. A  
14 dealer that would be farther away from the new location  
15 of an existing dealership or franchise of the same line  
16 make after a relocation may not file a written protest  
17 against the relocation with the Motor Vehicle Review  
18 Board.

19 D. Nothing in this Section shall be construed to  
20 prevent a franchiser from implementing affirmative  
21 action programs providing business opportunities for  
22 minorities or from complying with applicable federal,  
23 State or local law;

24 (9) to require a motor vehicle dealer to assent to a  
25 release, assignment, novation, waiver or estoppel which  
26 would relieve any person from liability imposed by this

1 Act;

2 (10) to prevent or refuse to give effect to the  
3 succession to the ownership or management control of a  
4 dealership by any legatee under the will of a dealer or to  
5 an heir under the laws of descent and distribution of this  
6 State unless the franchisee has designated a successor to  
7 the ownership or management control under the succession  
8 provisions of the franchise. Unless the franchiser, having  
9 the burden of proof, proves that the successor is a person  
10 who is not of good moral character or does not meet the  
11 franchiser's existing and reasonable capital standards  
12 and, with consideration given to the volume of sales and  
13 service of the dealership, uniformly applied minimum  
14 business experience standards in the market area, any  
15 designated successor of a dealer or franchisee may succeed  
16 to the ownership or management control of a dealership  
17 under the existing franchise if:

18 (i) The designated successor gives the  
19 franchiser written notice by certified mail,  
20 return receipt requested, of his or her intention  
21 to succeed to the ownership of the dealer within 60  
22 days of the dealer's death or incapacity; and

23 (ii) The designated successor agrees to be  
24 bound by all the terms and conditions of the  
25 existing franchise.

26 Notwithstanding the foregoing, in the event the motor

1 vehicle dealer or franchisee and manufacturer have duly  
2 executed an agreement concerning succession rights prior  
3 to the dealer's death or incapacitation, the agreement  
4 shall be observed.

5 (A) If the franchiser intends to refuse to honor  
6 the successor to the ownership of a deceased or  
7 incapacitated dealer or franchisee under an existing  
8 franchise agreement, the franchiser shall send a  
9 letter by certified mail, return receipt requested, to  
10 the designated successor within 60 days from receipt of  
11 a proposal advising of its intent to refuse to honor  
12 the succession and to discontinue the existing  
13 franchise agreement and shall state that the  
14 designated successor only has 30 days from the receipt  
15 of the notice to file with the Motor Vehicle Review  
16 Board a written protest against the proposed action.  
17 The notice shall set forth the specific grounds for the  
18 refusal to honor the succession and discontinue the  
19 existing franchise agreement.

20 If notice of refusal is not timely served upon the  
21 designated successor, the franchise agreement shall  
22 continue in effect subject to termination only as  
23 otherwise permitted by paragraph (6) of subsection (d)  
24 of Section 4 of this Act.

25 Within 30 days from the date the notice was  
26 received by the designated successor or any other

1 person entitled to notice, the designee or other person  
2 may file with the Board a written protest against the  
3 proposed action.

4 When a protest has been timely filed, the Board  
5 shall enter an order, fixing a date (within 60 days of  
6 the date of the order), time, and place of a hearing on  
7 the protest, required under Sections 12 and 29 of this  
8 Act, and send by certified mail, return receipt  
9 requested, a copy of the order to the franchiser that  
10 filed the notice of intention of the proposed action  
11 and to the protesting designee or such other person.

12 The manufacturer shall have the burden of proof to  
13 establish that good cause exists to refuse to honor the  
14 succession and discontinue the existing franchise  
15 agreement. The determination whether good cause exists  
16 to refuse to honor the succession shall be made by the  
17 Board under subdivision (B) of this paragraph (10). The  
18 manufacturer shall not refuse to honor the succession  
19 or discontinue the existing franchise agreement before  
20 the hearing process is concluded as prescribed by this  
21 Act, and thereafter if the Board determines that it has  
22 failed to meet its burden of proof and that good cause  
23 does not exist to refuse to honor the succession and  
24 discontinue the existing franchise agreement.

25 (B) No manufacturer shall impose any conditions  
26 upon honoring the succession and continuing the



1 existing franchise agreement with the designated  
2 successor other than that the franchisee has  
3 designated a successor to the ownership or management  
4 control under the succession provisions of the  
5 franchise, or that the designated successor is of good  
6 moral character or meets the reasonable capital  
7 standards and, with consideration given to the volume  
8 of sales and service of the dealership, uniformly  
9 applied minimum business experience standards in the  
10 market area;

11 (11) to prevent or refuse to approve a proposal to  
12 establish a successor franchise at a location previously  
13 approved by the franchiser when submitted with the  
14 voluntary termination by the existing franchisee unless  
15 the successor franchisee would not otherwise qualify for a  
16 new motor vehicle dealer's license under the Illinois  
17 Vehicle Code or unless the franchiser, having the burden of  
18 proof, proves that such proposed successor is not of good  
19 moral character or does not meet the franchiser's existing  
20 and reasonable capital standards and, with consideration  
21 given to the volume of sales and service of the dealership,  
22 uniformly applied minimum business experience standards in  
23 the market area. However, when such a rejection of a  
24 proposal is made, the manufacturer shall give written  
25 notice of its reasons to the franchisee within 60 days of  
26 receipt by the manufacturer of the proposal. However,

1 nothing herein shall be construed to prevent a franchiser  
2 from implementing affirmative action programs providing  
3 business opportunities for minorities, or from complying  
4 with applicable federal, State or local law;

5 (12) to prevent or refuse to grant a franchise to a  
6 person because such person owns, has investment in or  
7 participates in the management of or holds a franchise for  
8 the sale of another make or line of motor vehicles within 7  
9 miles of the proposed franchise location in a county having  
10 a population of more than 300,000 persons, or within 12  
11 miles of the proposed franchise location in a county having  
12 a population of less than 300,000 persons; ~~or~~

13 (13) to prevent or attempt to prevent any new motor  
14 vehicle dealer from establishing any additional motor  
15 vehicle dealership or other facility limited to the sale of  
16 factory repurchase vehicles or late model vehicles or  
17 otherwise offering for sale factory repurchase vehicles of  
18 the same line make at an existing franchise by failing to  
19 make available any contract, agreement or other  
20 arrangement which is made available or otherwise offered to  
21 any person; or.

22 (14) to exercise a right of first refusal or other  
23 right to acquire a franchise from a dealer, unless the  
24 manufacturer:

25 (A) notifies the dealer in writing that it intends  
26 to exercise its right to acquire the franchise not

1           later than 60 days after the manufacturer's or  
2           distributor's receipt of a notice of the proposed  
3           transfer from the dealer and all information and  
4           documents reasonably and customarily required by the  
5           manufacturer or distributor supporting the proposed  
6           transfer;

7           (B) pays to the dealer the same or greater  
8           consideration as the dealer has contracted to receive  
9           in connection with the proposed transfer or sale of all  
10           or substantially all of the dealership assets, stock,  
11           or other ownership interest, including the purchase or  
12           lease of all real property, leasehold, or improvements  
13           related to the transfer or sale of the dealership. Upon  
14           exercise of the right of first refusal or such other  
15           right, the manufacturer or distributor shall have the  
16           right to assign the lease or to convey the real  
17           property;

18           (C) assumes all of the duties, obligations, and  
19           liabilities contained in the agreements that were to be  
20           assumed by the proposed transferee and with respect to  
21           which the manufacturer or distributor exercised the  
22           right of first refusal or other right to acquire the  
23           franchise;

24           (D) reimburses the proposed transferee for all  
25           reasonable expenses incurred in evaluating,  
26           investigating, and negotiating the transfer of the

1           dealership prior to the manufacturer's or  
2           distributor's exercise of its right of first refusal or  
3           other right to acquire the dealership. For purposes of  
4           this paragraph, "reasonable expenses" includes the  
5           usual and customary legal and accounting fees charged  
6           for similar work, as well as expenses associated with  
7           the evaluation and investigation of any real property  
8           on which the dealership is operated. The proposed  
9           transferee shall submit an itemized list of its  
10           expenses to the manufacturer or distributor not later  
11           than 30 days after the manufacturer's or distributor's  
12           exercise of the right of first refusal or other right  
13           to acquire the motor vehicle franchise. The  
14           manufacturer or distributor shall reimburse the  
15           proposed transferee for its expenses not later than 90  
16           days after receipt of the itemized list. A manufacturer  
17           or distributor may request to be provided with the  
18           itemized list of expenses before exercising the  
19           manufacturer's or distributor's right of first  
20           refusal.

21           Except as provided in this paragraph (14), neither the  
22           selling dealer nor the manufacturer or distributor shall  
23           have any liability to any person as a result of a  
24           manufacturer or distributor exercising its right of first  
25           refusal.

26           For the purpose of this paragraph, "proposed

1       transferee" means the person to whom the franchise would  
2       have been transferred to, or was proposed to be transferred  
3       to, had the right of first refusal or other right to  
4       acquire the franchise not been exercised by the  
5       manufacturer or distributor.

6       (f) It is deemed a violation for a manufacturer, a  
7       distributor, a wholesaler, a distributor branch or division, a  
8       factory branch or division, or a wholesale branch or division,  
9       or officer, agent, broker, shareholder, except a shareholder of  
10      1% or less of the outstanding shares of any class of securities  
11      of a manufacturer, distributor, or wholesaler which is a  
12      publicly traded corporation, or other representative, directly  
13      or indirectly, to own or operate a place of business as a motor  
14      vehicle franchisee or motor vehicle financing affiliate,  
15      except that, this subsection shall not prohibit:

16           (1) the ownership or operation of a place of business  
17           by a manufacturer, distributor, or wholesaler for a period,  
18           not to exceed 18 months, during the transition from one  
19           motor vehicle franchisee to another;

20           (2) the investment in a motor vehicle franchisee by a  
21           manufacturer, distributor, or wholesaler if the investment  
22           is for the sole purpose of enabling a partner or  
23           shareholder in that motor vehicle franchisee to acquire an  
24           interest in that motor vehicle franchisee and that partner  
25           or shareholder is not otherwise employed by or associated  
26           with the manufacturer, distributor, or wholesaler and

1 would not otherwise have the requisite capital investment  
2 funds to invest in the motor vehicle franchisee, and has  
3 the right to purchase the entire equity interest of the  
4 manufacturer, distributor, or wholesaler in the motor  
5 vehicle franchisee within a reasonable period of time not  
6 to exceed 5 years; or

7 (3) the ownership or operation of a place of business  
8 by a manufacturer that manufactures only diesel engines for  
9 installation in trucks having a gross vehicle weight rating  
10 of more than 16,000 pounds that are required to be  
11 registered under the Illinois Vehicle Code, provided that:

12 (A) the manufacturer does not otherwise  
13 manufacture, distribute, or sell motor vehicles as  
14 defined under Section 1-217 of the Illinois Vehicle  
15 Code;

16 (B) the manufacturer owned a place of business and  
17 it was in operation as of January 1, 2016;

18 (C) the manufacturer complies with all obligations  
19 owed to dealers that are not owned, operated, or  
20 controlled by the manufacturer, including, but not  
21 limited to those obligations arising pursuant to  
22 Section 6;

23 (D) to further avoid any acts or practices, the  
24 effect of which may be to lessen or eliminate  
25 competition, the manufacturer provides to dealers on  
26 substantially equal terms access to all support for

1 completing repairs, including, but not limited to,  
2 parts and assemblies, training, and technical service  
3 bulletins, and other information concerning repairs  
4 that the manufacturer provides to facilities that are  
5 owned, operated, or controlled by the manufacturer;  
6 and

7 (E) the manufacturer does not require that  
8 warranty repair work be performed by a  
9 manufacturer-owned repair facility and the  
10 manufacturer provides any dealer that has an agreement  
11 with the manufacturer to sell and perform warranty  
12 repairs on the manufacturer's engines the opportunity  
13 to perform warranty repairs on those engines,  
14 regardless of whether the dealer sold the truck into  
15 which the engine was installed.

16 (g) Notwithstanding the terms, provisions, or conditions  
17 of any agreement or waiver, it shall be deemed a violation for  
18 a manufacturer, a distributor, a wholesaler, a distributor  
19 branch or division, a factory branch or division, or a  
20 wholesale branch or division, or officer, agent or other  
21 representative thereof, to directly or indirectly condition  
22 the awarding of a franchise to a prospective new motor vehicle  
23 dealer, the addition of a line make or franchise to an existing  
24 dealer, the renewal of a franchise of an existing dealer, the  
25 approval of the relocation of an existing dealer's facility, or  
26 the approval of the sale or transfer of the ownership of a

1 franchise on the willingness of a dealer, proposed new dealer,  
2 or owner of an interest in the dealership facility to enter  
3 into a site control agreement or exclusive use agreement unless  
4 separate and reasonable consideration was offered and accepted  
5 for that agreement.

6 For purposes of this subsection (g), the terms "site  
7 control agreement" and "exclusive use agreement" include any  
8 agreement that has the effect of either (i) requiring that the  
9 dealer establish or maintain exclusive dealership facilities;  
10 or (ii) restricting the ability of the dealer, or the ability  
11 of the dealer's lessor in the event the dealership facility is  
12 being leased, to transfer, sell, lease, or change the use of  
13 the dealership premises, whether by sublease, lease,  
14 collateral pledge of lease, or other similar agreement. "Site  
15 control agreement" and "exclusive use agreement" also include a  
16 manufacturer restricting the ability of a dealer to transfer,  
17 sell, or lease the dealership premises by right of first  
18 refusal to purchase or lease, option to purchase, or option to  
19 lease if the transfer, sale, or lease of the dealership  
20 premises is to a person who is an immediate family member of  
21 the dealer. For the purposes of this subsection (g), "immediate  
22 family member" means a spouse, parent, son, daughter,  
23 son-in-law, daughter-in-law, brother, and sister.

24 If a manufacturer exercises any right of first refusal to  
25 purchase or lease or option to purchase or lease with regard to  
26 a transfer, sale, or lease of the dealership premises to a



1 person who is not an immediate family member of the dealer,  
2 then (1) within 60 days from the receipt of the completed  
3 application forms generally utilized by a manufacturer to  
4 conduct its review and a copy of all agreements regarding the  
5 proposed transfer, the manufacturer must notify the dealer of  
6 its intent to exercise the right of first refusal to purchase  
7 or lease or option to purchase or lease and (2) the exercise of  
8 the right of first refusal to purchase or lease or option to  
9 purchase or lease must result in the dealer receiving  
10 consideration, terms, and conditions that either are the same  
11 as or greater than that which they have contracted to receive  
12 in connection with the proposed transfer, sale, or lease of the  
13 dealership premises.

14 Any provision contained in any agreement entered into on or  
15 after November 25, 2009 (the effective date of Public Act  
16 96-824) ~~this amendatory Act of the 96th General Assembly~~ that  
17 is inconsistent with the provisions of this subsection (g)  
18 shall be voidable at the election of the affected dealer,  
19 prospective dealer, or owner of an interest in the dealership  
20 facility.

21 (h) For purposes of this subsection:

22 "Successor manufacturer" means any motor vehicle  
23 manufacturer that, on or after January 1, 2009, acquires,  
24 succeeds to, or assumes any part of the business of another  
25 manufacturer, referred to as the "predecessor manufacturer",  
26 as the result of any of the following:

1 (i) A change in ownership, operation, or control of the  
2 predecessor manufacturer by sale or transfer of assets,  
3 corporate stock or other equity interest, assignment,  
4 merger, consolidation, combination, joint venture,  
5 redemption, court-approved sale, operation of law or  
6 otherwise.

7 (ii) The termination, suspension, or cessation of a  
8 part or all of the business operations of the predecessor  
9 manufacturer.

10 (iii) The discontinuance of the sale of the product  
11 line.

12 (iv) A change in distribution system by the predecessor  
13 manufacturer, whether through a change in distributor or  
14 the predecessor manufacturer's decision to cease  
15 conducting business through a distributor altogether.

16 "Former Franchisee" means a new motor vehicle dealer that  
17 has entered into a franchise with a predecessor manufacturer  
18 and that has either:

19 (i) entered into a termination agreement or deferred  
20 termination agreement with a predecessor or successor  
21 manufacturer related to such franchise; or

22 (ii) has had such franchise canceled, terminated,  
23 nonrenewed, noncontinued, rejected, nonassumed, or  
24 otherwise ended.

25 For a period of 3 years from: (i) the date that a successor  
26 manufacturer acquires, succeeds to, or assumes any part of the

1 business of a predecessor manufacturer; (ii) the last day that  
2 a former franchisee is authorized to remain in business as a  
3 franchised dealer with respect to a particular franchise under  
4 a termination agreement or deferred termination agreement with  
5 a predecessor or successor manufacturer; (iii) the last day  
6 that a former franchisee that was cancelled, terminated,  
7 nonrenewed, noncontinued, rejected, nonassumed, or otherwise  
8 ended by a predecessor or successor manufacturer is authorized  
9 to remain in business as a franchised dealer with respect to a  
10 particular franchise; or (iv) November 25, 2009 (the effective  
11 date of Public Act 96-824) ~~this amendatory Act of the 96th~~  
12 ~~General Assembly~~, whichever is latest, it shall be unlawful for  
13 such successor manufacturer to enter into a same line make  
14 franchise with any person or to permit the relocation of any  
15 existing same line make franchise, for a line make of the  
16 predecessor manufacturer that would be located or relocated  
17 within the relevant market area of a former franchisee who  
18 owned or leased a dealership facility in that relevant market  
19 area without first offering the additional or relocated  
20 franchise to the former franchisee, or the designated successor  
21 of such former franchisee in the event the former franchisee is  
22 deceased or a person with a disability, at no cost and without  
23 any requirements or restrictions other than those imposed  
24 generally on the manufacturer's other franchisees at that time,  
25 unless one of the following applies:

26 (1) As a result of the former franchisee's

1 cancellation, termination, noncontinuance, or nonrenewal  
2 of the franchise, the predecessor manufacturer had  
3 consolidated the line make with another of its line makes  
4 for which the predecessor manufacturer had a franchisee  
5 with a then-existing dealership facility located within  
6 that relevant market area.

7 (2) The successor manufacturer has paid the former  
8 franchisee, or the designated successor of such former  
9 franchisee in the event the former franchisee is deceased  
10 or a person with a disability, the fair market value of the  
11 former franchisee's franchise on (i) the date the  
12 franchisor announces the action which results in the  
13 termination, cancellation, or nonrenewal; or (ii) the date  
14 the action which results in termination, cancellation, or  
15 nonrenewal first became general knowledge; or (iii) the day  
16 12 months prior to the date on which the notice of  
17 termination, cancellation, or nonrenewal is issued,  
18 whichever amount is higher. Payment is due within 90 days  
19 of the effective date of the termination, cancellation, or  
20 nonrenewal. If the termination, cancellation, or  
21 nonrenewal is due to a manufacturer's change in  
22 distributors, the manufacturer may avoid paying fair  
23 market value to the dealer if the new distributor or the  
24 manufacturer offers the dealer a franchise agreement with  
25 terms acceptable to the dealer.

26 (3) The successor manufacturer proves that it would

1           have had good cause to terminate the franchise agreement of  
2           the former franchisee, or the successor of the former  
3           franchisee under item (e)(10) in the event that the former  
4           franchisee is deceased or a person with a disability. The  
5           determination of whether the successor manufacturer would  
6           have had good cause to terminate the franchise agreement of  
7           the former franchisee, or the successor of the former  
8           franchisee, shall be made by the Board under subsection (d)  
9           of Section 12. A successor manufacturer that seeks to  
10          assert that it would have had good cause to terminate a  
11          former franchisee, or the successor of the former  
12          franchisee, must file a petition seeking a hearing on this  
13          issue before the Board and shall have the burden of proving  
14          that it would have had good cause to terminate the former  
15          franchisee or the successor of the former franchisee. No  
16          successor dealer, other than the former franchisee, may be  
17          appointed or franchised by the successor manufacturer  
18          within the relevant market area of the former franchisee  
19          until the Board has held a hearing and rendered a  
20          determination on the issue of whether the successor  
21          manufacturer would have had good cause to terminate the  
22          former franchisee.

23          In the event that a successor manufacturer attempts to  
24          enter into a same line make franchise with any person or to  
25          permit the relocation of any existing line make franchise under  
26          this subsection (h) at a location that is within the relevant

1 market area of 2 or more former franchisees, then the successor  
2 manufacturer may not offer it to any person other than one of  
3 those former franchisees unless the successor manufacturer can  
4 prove that at least one of the 3 exceptions in items (1), (2),  
5 and (3) of this subsection (h) applies to each of those former  
6 franchisees.

7 (Source: P.A. 99-143, eff. 7-27-15; 99-844, eff. 8-19-16;  
8 revised 10-27-16.)

9 (815 ILCS 710/12) (from Ch. 121 1/2, par. 762)

10 Sec. 12. Arbitration; administrative proceedings; civil  
11 actions; determining good cause.

12 (a) The franchiser and franchisee may agree to submit a  
13 dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11 to  
14 arbitration. Any such proceeding shall be conducted under the  
15 provisions of the Uniform Arbitration Act by a 3 member panel  
16 composed of one member appointed by the franchisee and one  
17 member appointed by the franchiser who together shall choose  
18 the third member.

19 An arbitration proceeding hereunder for a remedy under  
20 paragraph (6) of subsection (d) or paragraph (6), (8), (10) or  
21 (11) of subsection (e) of Section 4 of this Act shall be  
22 commenced by written notice to the franchiser by the objecting  
23 franchisee within 30 days from the date the dealer received  
24 notice to cancel, terminate, modify or not extend or renew an  
25 existing franchise or selling agreement or refusal to honor

1 succession to ownership or refusal to honor a sale or transfer  
2 or to grant or enter into the additional franchise or selling  
3 agreement, or to relocate an existing motor vehicle dealer; or  
4 within 60 days of the date the franchisee received notice in  
5 writing by the franchiser of its determination under any  
6 provision of Section 4 (other than paragraph (6) of subsection  
7 (d) or paragraph (6), (8), (10) or (11) of subsection (e) of  
8 Section 4), 5, 6, 7, 9, 10.1, or 11 of this Act; however, if  
9 notice of the provision under which the determination has been  
10 made is not given by the franchiser, then the proceeding shall  
11 be commenced as provided by Section 14 of this Act.

12 The franchiser and the franchisee shall appoint their  
13 respective arbitrators and they shall select the third  
14 arbitrator within 14 days of receipt of such notice by the  
15 franchiser. The arbitrators shall commence hearings within 60  
16 days after all the arbitrators have been appointed and a  
17 decision shall be rendered within 30 days after completion of  
18 the hearing.

19 During the pendency of the arbitration, any party may apply  
20 to a court of competent jurisdiction which shall have power to  
21 modify or stay the effective date of a proposed additional  
22 franchise or selling agreement, or the effective date of a  
23 proposed motor vehicle dealership relocation or the effective  
24 date of a cancellation, termination or modification or refusal  
25 to honor succession or refusal to allow a sale or transfer or  
26 extend the expiration date of a franchise or selling agreement

1 pending a final determination of the issues raised in the  
2 arbitration hearing upon such terms as the court may determine.  
3 Any such modification or stay shall not be effective for more  
4 than 60 days unless extended by the court for good cause or  
5 unless the arbitration hearing is then in progress.

6 (b) If the franchiser and the franchisee have not agreed to  
7 submit a dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11  
8 of this Act to arbitration under subsection (a), then a  
9 proceeding before the Motor Vehicle Review Board as prescribed  
10 by subsection (c) or (d) of Section 12 and Section 29 of this  
11 Act for a remedy other than damages under paragraph (6) of  
12 subsection (d) or paragraph (6), (8), (10), or (11) of  
13 subsection (e) of Section 4 of this Act shall be commenced upon  
14 receipt by the Motor Vehicle Review Board of a timely notice of  
15 protest or within 60 days of the date the franchisee received  
16 notice in writing by the franchiser of its determination under  
17 any provision of those Sections other than paragraph (6) of  
18 subsection (d) or paragraph (6), (8), (10), or (11) of  
19 subsection (e) of Section 4 of this Act; however, if notice of  
20 the provision under which the determination has been made is  
21 not given by the franchiser, then the proceeding shall be  
22 commenced as provided by Section 14 of this Act.

23 During the pendency of a proceeding under this Section, a  
24 party may apply to a court of competent jurisdiction that shall  
25 have power to modify or stay the effective date of a proposed  
26 additional franchise or selling agreement, or the effective



1 date of a proposed motor vehicle dealership relocation, or the  
2 effective date of a cancellation, termination, or  
3 modification, or extend the expiration date of a franchise or  
4 selling agreement or refusal to honor succession to ownership  
5 or refusal to approve a sale or transfer pending a final  
6 determination of the issues raised in the hearing upon such  
7 terms as the court may determine. Any modification or stay  
8 shall not be effective for more than 60 days unless extended by  
9 the court for good cause or unless the hearing is then in  
10 progress.

11 (c) In proceedings under (a) or (b), when determining  
12 whether good cause has been established for granting such  
13 proposed additional franchise or selling agreement, or for  
14 relocating an existing motor vehicle dealership, the  
15 arbitrators or Board shall consider all relevant circumstances  
16 in accordance with subsection (v) of Section 2 of this Act,  
17 including but not limited to:

18 (1) whether the establishment of such additional  
19 franchise or the relocation of such motor vehicle  
20 dealership is warranted by economic and marketing  
21 conditions including anticipated future changes;

22 (2) the retail sales and service business transacted by  
23 the objecting motor vehicle dealer or dealers and other  
24 motor vehicle dealers of the same line make with a place of  
25 business in the relevant market area to be served by the  
26 additional franchise or the relocated motor vehicle

1 dealership during the 5 year period immediately preceding  
2 such notice as compared to the business available to them;

3 (3) the investment necessarily made and obligations  
4 incurred by the objecting motor vehicle dealer or dealers  
5 and other motor vehicle dealers of the same line make with  
6 a place of business in the relevant market area to be  
7 served by the additional franchise or the relocated motor  
8 vehicle dealership to perform their obligations under  
9 existing franchises or selling agreements; and, the  
10 manufacturer shall give reasonable credit for sales of  
11 factory repurchase vehicles purchased by the objecting  
12 motor vehicle dealer or dealers and other motor vehicle  
13 dealers of the same line make with the place of business in  
14 the relevant market area to be served by the additional  
15 franchise or the relocated motor vehicle dealership, or the  
16 additional motor vehicle dealership or other facility  
17 limited to the sale of factory repurchase or late model  
18 vehicles, at manufacturer authorized or sponsored auctions  
19 in determining performance of obligations under existing  
20 franchises or selling agreements relating to total new  
21 vehicle sales;

22 (4) the permanency of the investment of the objecting  
23 motor vehicle dealer or dealers and other motor vehicle  
24 dealers of the same line make with a place of business in  
25 the relevant market area to be served by the additional  
26 franchise or the relocated motor vehicle dealership;

1           (5) whether it is beneficial or injurious to the public  
2 welfare for an additional franchise or relocated motor  
3 vehicle dealership to be established;

4           (6) whether the objecting motor vehicle dealer or  
5 dealers and other motor vehicle dealers of the same line  
6 make with a place of business in the relevant market area  
7 to be served by the additional franchisee or relocated  
8 motor vehicle dealership are providing adequate  
9 competition and convenient consumer care for the motor  
10 vehicles of the same line make owned or operated in the  
11 area to be served by the additional franchise or relocated  
12 motor vehicle dealership;

13           (7) whether the objecting motor vehicle dealer or  
14 dealers and other motor vehicle dealers of the same line  
15 make with a place of business in the relevant market area  
16 to be served by the additional franchisee or the relocated  
17 motor vehicle dealership have adequate motor vehicle sales  
18 and service facilities, equipment, vehicle parts and  
19 qualified personnel to reasonably provide for the needs of  
20 the customer; provided, however, that good cause shall not  
21 be shown solely by a desire for further market penetration;

22           (8) whether the establishment of an additional  
23 franchise or the relocation of a motor vehicle dealership  
24 would be in the public interest;

25           (9) whether there has been a material breach by a motor  
26 vehicle dealer of the existing franchise agreement which

1 creates a substantially detrimental effect upon the  
2 distribution of the franchiser's motor vehicles in the  
3 affected motor vehicle dealer's relevant market area or  
4 fraudulent claims for warranty work, insolvency or  
5 inability to pay debts as they mature;

6 (10) the effect of an additional franchise or relocated  
7 motor vehicle dealership upon the existing motor vehicle  
8 dealers of the same line make in the relevant market area  
9 to be served by the additional franchisee or relocated  
10 motor vehicle dealership; and

11 (11) whether the manufacturer has given reasonable  
12 credit to the objecting motor vehicle dealer or dealers and  
13 other motor vehicle dealers of the same line make with a  
14 place of business in the relevant market area to be served  
15 by the additional franchise or relocated motor vehicle  
16 dealership or additional motor vehicle dealership or other  
17 facility limited to the sale of factory repurchase or late  
18 model vehicles, for retail sales of factory repurchase  
19 vehicles purchased by the motor vehicle dealer or dealers  
20 at manufacturer authorized or sponsored auctions.

21 (d) In proceedings under subsection (a) or (b), when  
22 determining whether good cause has been established for  
23 cancelling, terminating, refusing to extend or renew, or  
24 changing or modifying the obligations of the motor vehicle  
25 dealer as a condition to offering a renewal, replacement, or  
26 succeeding franchise or selling agreement, the arbitrators or

1 Board shall consider all relevant circumstances in accordance  
2 with subsection (v) of Section 2 of this Act, including but not  
3 limited to:

4 (1) The amount of retail sales transacted by the  
5 franchisee during a 5-year period immediately before the  
6 date of the notice of proposed action as compared to the  
7 business available to the franchisee.

8 (2) The investment necessarily made and obligations  
9 incurred by the franchisee to perform its part of the  
10 franchise.

11 (3) The permanency of the franchisee's investment.

12 (4) Whether it is injurious to the public interest for  
13 the franchise to be cancelled or terminated or not extended  
14 or modified, or the business of the franchise disrupted.

15 (5) Whether the franchisee has adequate motor vehicle  
16 sales and service facilities, equipment, vehicle parts,  
17 and service personnel to reasonably provide for the need of  
18 the customers for the same line make of motor vehicles  
19 handled by the franchisee.

20 (6) Whether the franchisee fails to fulfill the  
21 warranty obligations of the manufacturer required to be  
22 performed by the franchisee.

23 (7) The extent and materiality of the franchisee's  
24 failure to comply with the terms of the franchise and the  
25 reasonableness and fairness of those terms.

26 (8) Whether the owners of the franchise had actual

1 knowledge of the facts and circumstances upon which  
2 cancellation or termination, failure to extend or renew, or  
3 changing or modification of the obligations of the  
4 franchisee as a condition to offering a renewal,  
5 replacement, or succeeding franchise or selling agreement.

6 (9) The extent to which local market factors in the  
7 dealer's market area presented by the dealer impacted the  
8 dealer's performance.

9 (e) If the franchiser and the franchisee have not agreed to  
10 submit a dispute to arbitration, and the dispute did not arise  
11 under paragraph (6) of subsection (d) or paragraph (6), (8),  
12 (10), or (11) of subsection (e) of Section 4 of this Act, then  
13 a proceeding for a remedy other than damages may be commenced  
14 by the objecting franchisee in the circuit court of the county  
15 in which the objecting franchisee has its principal place of  
16 business, within 60 days of the date the franchisee received  
17 notice in writing by the franchiser of its determination under  
18 any provision of this Act other than paragraph (6) of  
19 subsection (d) or paragraph (6), (8), (10), or (11) of  
20 subsection (e) of Section 4 of this Act; however, if notice of  
21 the provision under which the determination has been made is  
22 not given by the franchiser, then the proceeding shall be  
23 commenced as provided by Section 14 of this Act.

24 (f) The changes to this Section made by this amendatory Act  
25 of the 92nd General Assembly (i) apply only to causes of action  
26 accruing on or after its effective date and (ii) are intended

1 to provide only an additional venue for dispute resolution  
2 without changing any substantive rights under this Act.

3 (Source: P.A. 92-272, eff. 1-1-02.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.