



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2857

by Rep. John C. D'Amico

SYNOPSIS AS INTRODUCED:

815 ILCS 710/4

from Ch. 121 1/2, par. 754

Amends the Motor Vehicle Franchise Act. Provides that it is a violation of the Act to sell a new motor vehicle directly to a retail customer other than through a franchised motor vehicle dealer. Provides that the Act shall not prohibit the ownership or operation of up to 13 places of business in this State by a manufacturer that: (i) has at least one facility in this State that provides repair service for vehicles subject to the manufacturer's warranty; (ii) does not have a franchise agreement with a new motor vehicle dealer operating in this State; and (iii) was granted a new vehicle dealer's license at any time before January 1, 2018 and the new vehicle dealer's license is in effect as of January 1, 2018. Provides conditions to the exception. Effective immediately.

LRB101 06208 TAE 51232 b

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 Section 4 as follows:

6 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

7 Sec. 4. Unfair competition and practices.

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

14 (b) It shall be deemed a violation for any manufacturer,
15 factory branch, factory representative, distributor or
16 wholesaler, distributor branch, distributor representative or
17 motor vehicle dealer to engage in any action with respect to a
18 franchise which is arbitrary, in bad faith or unconscionable
19 and which causes damage to any of the parties or to the public.

20 (c) It shall be deemed a violation for a manufacturer, a
21 distributor, a wholesaler, a distributor branch or division, a
22 factory branch or division, or a wholesale branch or division,
23 or officer, agent or other representative thereof, to coerce,

1 or attempt to coerce, any motor vehicle dealer:

2 (1) to accept, buy or order any motor vehicle or
3 vehicles, appliances, equipment, parts or accessories
4 therefor, or any other commodity or commodities or service
5 or services which such motor vehicle dealer has not
6 voluntarily ordered or requested except items required by
7 applicable local, state or federal law; or to require a
8 motor vehicle dealer to accept, buy, order or purchase such
9 items in order to obtain any motor vehicle or vehicles or
10 any other commodity or commodities which have been ordered
11 or requested by such motor vehicle dealer;

12 (2) to order or accept delivery of any motor vehicle
13 with special features, appliances, accessories or
14 equipment not included in the list price of the motor
15 vehicles as publicly advertised by the manufacturer
16 thereof, except items required by applicable law; or

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

20 (d) It shall be deemed a violation for a manufacturer, a
21 distributor, a wholesaler, a distributor branch or division, or
22 officer, agent or other representative thereof:

23 (1) to adopt, change, establish or implement a plan or
24 system for the allocation and distribution of new motor
25 vehicles to motor vehicle dealers which is arbitrary or
26 capricious or to modify an existing plan so as to cause the

1 same to be arbitrary or capricious;

2 (2) to fail or refuse to advise or disclose to any
3 motor vehicle dealer having a franchise or selling
4 agreement, upon written request therefor, the basis upon
5 which new motor vehicles of the same line make are
6 allocated or distributed to motor vehicle dealers in the
7 State and the basis upon which the current allocation or
8 distribution is being made or will be made to such motor
9 vehicle dealer;

10 (3) to refuse to deliver in reasonable quantities and
11 within a reasonable time after receipt of dealer's order,
12 to any motor vehicle dealer having a franchise or selling
13 agreement for the retail sale of new motor vehicles sold or
14 distributed by such manufacturer, distributor, wholesaler,
15 distributor branch or division, factory branch or division
16 or wholesale branch or division, any such motor vehicles as
17 are covered by such franchise or selling agreement
18 specifically publicly advertised in the State by such
19 manufacturer, distributor, wholesaler, distributor branch
20 or division, factory branch or division, or wholesale
21 branch or division to be available for immediate delivery.
22 However, the failure to deliver any motor vehicle shall not
23 be considered a violation of this Act if such failure is
24 due to an act of God, a work stoppage or delay due to a
25 strike or labor difficulty, a shortage of materials, a lack
26 of manufacturing capacity, a freight embargo or other cause

1 over which the manufacturer, distributor, or wholesaler,
2 or any agent thereof has no control;

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

19 (5) to require a franchisee to participate in an
20 advertising campaign or contest or any promotional
21 campaign, or to purchase or lease any promotional
22 materials, training materials, show room or other display
23 decorations or materials at the expense of the franchisee;

24 (6) to cancel or terminate the franchise or selling
25 agreement of a motor vehicle dealer without good cause and
26 without giving notice as hereinafter provided; to fail or

1 refuse to extend the franchise or selling agreement of a
2 motor vehicle dealer upon its expiration without good cause
3 and without giving notice as hereinafter provided; or, to
4 offer a renewal, replacement or succeeding franchise or
5 selling agreement containing terms and provisions the
6 effect of which is to substantially change or modify the
7 sales and service obligations or capital requirements of
8 the motor vehicle dealer arbitrarily and without good cause
9 and without giving notice as hereinafter provided
10 notwithstanding any term or provision of a franchise or
11 selling agreement.

12 (A) If a manufacturer, distributor, wholesaler,
13 distributor branch or division, factory branch or
14 division or wholesale branch or division intends to
15 cancel or terminate a franchise or selling agreement or
16 intends not to extend or renew a franchise or selling
17 agreement on its expiration, it shall send a letter by
18 certified mail, return receipt requested, to the
19 affected franchisee at least 60 days before the
20 effective date of the proposed action, or not later
21 than 10 days before the proposed action when the reason
22 for the action is based upon either of the following:

23 (i) the business operations of the franchisee
24 have been abandoned or the franchisee has failed to
25 conduct customary sales and service operations
26 during customary business hours for at least 7

1 consecutive business days unless such closing is
2 due to an act of God, strike or labor difficulty or
3 other cause over which the franchisee has no
4 control; or

5 (ii) the conviction of or plea of nolo
6 contendere by the motor vehicle dealer or any
7 operator thereof in a court of competent
8 jurisdiction to an offense punishable by
9 imprisonment for more than two years.

10 Each notice of proposed action shall include a
11 detailed statement setting forth the specific grounds
12 for the proposed cancellation, termination, or refusal
13 to extend or renew and shall state that the dealer has
14 only 30 days from receipt of the notice to file with
15 the Motor Vehicle Review Board a written protest
16 against the proposed action.

17 (B) If a manufacturer, distributor, wholesaler,
18 distributor branch or division, factory branch or
19 division or wholesale branch or division intends to
20 change substantially or modify the sales and service
21 obligations or capital requirements of a motor vehicle
22 dealer as a condition to extending or renewing the
23 existing franchise or selling agreement of such motor
24 vehicle dealer, it shall send a letter by certified
25 mail, return receipt requested, to the affected
26 franchisee at least 60 days before the date of

1 expiration of the franchise or selling agreement. Each
2 notice of proposed action shall include a detailed
3 statement setting forth the specific grounds for the
4 proposed action and shall state that the dealer has
5 only 30 days from receipt of the notice to file with
6 the Motor Vehicle Review Board a written protest
7 against the proposed action.

8 (C) Within 30 days from receipt of the notice under
9 subparagraphs (A) and (B), the franchisee may file with
10 the Board a written protest against the proposed
11 action.

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

20 The manufacturer shall have the burden of proof to
21 establish that good cause exists to cancel or
22 terminate, or fail to extend or renew the franchise or
23 selling agreement of a motor vehicle dealer or
24 franchisee, and to change substantially or modify the
25 sales and service obligations or capital requirements
26 of a motor vehicle dealer as a condition to extending

1 or renewing the existing franchise or selling
2 agreement. The determination whether good cause exists
3 to cancel, terminate, or refuse to renew or extend the
4 franchise or selling agreement, or to change or modify
5 the obligations of the dealer as a condition to offer
6 renewal, replacement, or succession shall be made by
7 the Board under subsection (d) of Section 12 of this
8 Act.

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

20 (E) The manufacturer may not cancel or terminate,
21 or fail to extend or renew a franchise or selling
22 agreement or change or modify the obligations of the
23 franchisee as a condition to offering a renewal,
24 replacement, or succeeding franchise or selling
25 agreement before the hearing process is concluded as
26 prescribed by this Act, and thereafter, if the Board

1 determines that the manufacturer has failed to meet its
2 burden of proof and that good cause does not exist to
3 allow the proposed action;

4 (7) notwithstanding the terms of any franchise
5 agreement, to fail to indemnify and hold harmless its
6 franchised dealers against any judgment or settlement for
7 damages, including, but not limited to, court costs, expert
8 witness fees, reasonable attorneys' fees of the new motor
9 vehicle dealer, and other expenses incurred in the
10 litigation, so long as such fees and costs are reasonable,
11 arising out of complaints, claims, or lawsuits, including,
12 but not limited to, strict liability, negligence,
13 misrepresentation, warranty (express or implied), or
14 rescission of the sale as defined in Section 2-608 of the
15 Uniform Commercial Code, to the extent that the judgment or
16 settlement relates to the alleged defective or negligent
17 manufacture, assembly or design of new motor vehicles,
18 parts or accessories or other functions by the
19 manufacturer, beyond the control of the dealer; provided
20 that, in order to provide an adequate defense, the
21 manufacturer receives notice of the filing of a complaint,
22 claim, or lawsuit within 60 days after the filing;

23 (8) to require or otherwise coerce a motor vehicle
24 dealer to underutilize the motor vehicle dealer's
25 facilities by requiring or otherwise coercing the motor
26 vehicle dealer to exclude or remove from the motor vehicle

1 dealer's facilities operations for selling or servicing of
2 any vehicles for which the motor vehicle dealer has a
3 franchise agreement with another manufacturer,
4 distributor, wholesaler, distribution branch or division,
5 or officer, agent, or other representative thereof;
6 provided, however, that, in light of all existing
7 circumstances, (i) the motor vehicle dealer maintains a
8 reasonable line of credit for each make or line of new
9 motor vehicle, (ii) the new motor vehicle dealer remains in
10 compliance with any reasonable facilities requirements of
11 the manufacturer, (iii) no change is made in the principal
12 management of the new motor vehicle dealer, and (iv) the
13 addition of the make or line of new motor vehicles would be
14 reasonable. The reasonable facilities requirement set
15 forth in item (ii) of subsection (d)(8) shall not include
16 any requirement that a franchisee establish or maintain
17 exclusive facilities, personnel, or display space. Any
18 decision by a motor vehicle dealer to sell additional makes
19 or lines at the motor vehicle dealer's facility shall be
20 presumed to be reasonable, and the manufacturer shall have
21 the burden to overcome that presumption. A motor vehicle
22 dealer must provide a written notification of its intent to
23 add a make or line of new motor vehicles to the
24 manufacturer. If the manufacturer does not respond to the
25 motor vehicle dealer, in writing, objecting to the addition
26 of the make or line within 60 days after the date that the

1 motor vehicle dealer sends the written notification, then
2 the manufacturer shall be deemed to have approved the
3 addition of the make or line;

4 (9) to use or consider the performance of a motor
5 vehicle dealer relating to the sale of the manufacturer's,
6 distributor's, or wholesaler's vehicles or the motor
7 vehicle dealer's ability to satisfy any minimum sales or
8 market share quota or responsibility relating to the sale
9 of the manufacturer's, distributor's, or wholesaler's new
10 vehicles in determining:

11 (A) the motor vehicle dealer's eligibility to
12 purchase program, certified, or other used motor
13 vehicles from the manufacturer, distributor, or
14 wholesaler;

15 (B) the volume, type, or model of program,
16 certified, or other used motor vehicles that a motor
17 vehicle dealer is eligible to purchase from the
18 manufacturer, distributor, or wholesaler;

19 (C) the price of any program, certified, or other
20 used motor vehicle that the dealer is eligible to
21 purchase from the manufacturer, distributor, or
22 wholesaler; or

23 (D) the availability or amount of any discount,
24 credit, rebate, or sales incentive that the dealer is
25 eligible to receive from the manufacturer,
26 distributor, or wholesaler for the purchase of any

1 program, certified, or other used motor vehicle
2 offered for sale by the manufacturer, distributor, or
3 wholesaler;

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

21 (11) to coerce or require any dealer to construct
22 improvements to his or her facilities or to install new
23 signs or other franchiser image elements that replace or
24 substantially alter those improvements, signs, or
25 franchiser image elements completed within the past 10
26 years that were required and approved by the manufacturer

1 or one of its affiliates. The 10-year period under this
2 paragraph (11) begins to run for a dealer, including that
3 dealer's successors and assigns, on the date that the
4 manufacturer gives final written approval of the facility
5 improvements or installation of signs or other franchiser
6 image elements or the date that the dealer receives a
7 certificate of occupancy, whichever is later. For the
8 purpose of this paragraph (11), the term "substantially
9 alter" does not include routine maintenance, including,
10 but not limited to, interior painting, that is reasonably
11 necessary to keep a dealer facility in attractive
12 condition; or

13 (12) to require a dealer to purchase goods or services
14 to make improvements to the dealer's facilities from a
15 vendor selected, identified, or designated by a
16 manufacturer or one of its affiliates by agreement,
17 program, incentive provision, or otherwise without making
18 available to the dealer the option to obtain the goods or
19 services of substantially similar quality and overall
20 design from a vendor chosen by the dealer and approved by
21 the manufacturer; however, approval by the manufacturer
22 shall not be unreasonably withheld, and the dealer's option
23 to select a vendor shall not be available if the
24 manufacturer provides substantial reimbursement for the
25 goods or services offered. "Substantial reimbursement"
26 means an amount equal to or greater than the cost savings

1 that would result if the dealer were to utilize a vendor of
2 the dealer's own selection instead of using the vendor
3 identified by the manufacturer. For the purpose of this
4 paragraph (12), the term "goods" does not include movable
5 displays, brochures, and promotional materials containing
6 material subject to the intellectual property rights of a
7 manufacturer. If signs, other than signs containing the
8 manufacturer's brand or logo or free-standing signs that
9 are not directly attached to a building, or other
10 franchiser image or design elements or trade dress are to
11 be leased to the dealer by a vendor selected, identified,
12 or designated by the manufacturer, the dealer has the right
13 to purchase the signs or other franchiser image or design
14 elements or trade dress of substantially similar quality
15 and design from a vendor selected by the dealer if the
16 signs, franchiser image or design elements, or trade dress
17 are approved by the manufacturer. Approval by the
18 manufacturer shall not be unreasonably withheld. This
19 paragraph (12) shall not be construed to allow a dealer or
20 vendor to impair, infringe upon, or eliminate, directly or
21 indirectly, the intellectual property rights of the
22 manufacturer, including, but not limited to, the
23 manufacturer's intellectual property rights in any
24 trademarks or trade dress, or other intellectual property
25 interests owned or controlled by the manufacturer. This
26 paragraph (12) shall not be construed to permit a dealer to

1 erect or maintain signs that do not conform to the
2 manufacturer's intellectual property rights or trademark
3 or trade dress usage guidelines.

4 (e) It shall be deemed a violation for a manufacturer, a
5 distributor, a wholesaler, a distributor branch or division or
6 officer, agent or other representative thereof:

7 (1) to resort to or use any false or misleading
8 advertisement in connection with his business as such
9 manufacturer, distributor, wholesaler, distributor branch
10 or division or officer, agent or other representative
11 thereof;

12 (2) to offer to sell or lease, or to sell or lease, any
13 new motor vehicle to any motor vehicle dealer at a lower
14 actual price therefor than the actual price offered to any
15 other motor vehicle dealer for the same model vehicle
16 similarly equipped or to utilize any device including, but
17 not limited to, sales promotion plans or programs which
18 result in such lesser actual price or fail to make
19 available to any motor vehicle dealer any preferential
20 pricing, incentive, rebate, finance rate, or low interest
21 loan program offered to competing motor vehicle dealers in
22 other contiguous states. However, the provisions of this
23 paragraph shall not apply to sales to a motor vehicle
24 dealer for resale to any unit of the United States
25 Government, the State or any of its political subdivisions;

26 (3) to offer to sell or lease, or to sell or lease, any

1 new motor vehicle to any person, except a wholesaler,
2 distributor or manufacturer's employees at a lower actual
3 price therefor than the actual price offered and charged to
4 a motor vehicle dealer for the same model vehicle similarly
5 equipped or to utilize any device which results in such
6 lesser actual price. However, the provisions of this
7 paragraph shall not apply to sales to a motor vehicle
8 dealer for resale to any unit of the United States
9 Government, the State or any of its political subdivisions;

10 (4) to prevent or attempt to prevent by contract or
11 otherwise any motor vehicle dealer or franchisee from
12 changing the executive management control of the motor
13 vehicle dealer or franchisee unless the franchiser, having
14 the burden of proof, proves that such change of executive
15 management will result in executive management control by a
16 person or persons who are not of good moral character or
17 who do not meet the franchiser's existing and, with
18 consideration given to the volume of sales and service of
19 the dealership, uniformly applied minimum business
20 experience standards in the market area. However, where the
21 manufacturer rejects a proposed change in executive
22 management control, the manufacturer shall give written
23 notice of his reasons to the dealer within 60 days of
24 notice to the manufacturer by the dealer of the proposed
25 change. If the manufacturer does not send a letter to the
26 franchisee by certified mail, return receipt requested,

1 within 60 days from receipt by the manufacturer of the
2 proposed change, then the change of the executive
3 management control of the franchisee shall be deemed
4 accepted as proposed by the franchisee, and the
5 manufacturer shall give immediate effect to such change;

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

16 (6) to refuse to give effect to or prevent or attempt
17 to prevent by contract or otherwise any motor vehicle
18 dealer or any officer, partner or stockholder of any motor
19 vehicle dealer from selling or transferring any part of the
20 interest of any of them to any other person or persons or
21 party or parties unless such sale or transfer is to a
22 transferee who would not otherwise qualify for a new motor
23 vehicle dealers license under the Illinois Vehicle Code or
24 unless the franchiser, having the burden of proof, proves
25 that such sale or transfer is to a person or party who is
26 not of good moral character or does not meet the

1 franchiser's existing and reasonable capital standards
2 and, with consideration given to the volume of sales and
3 service of the dealership, uniformly applied minimum
4 business experience standards in the market area. However,
5 nothing herein shall be construed to prevent a franchiser
6 from implementing affirmative action programs providing
7 business opportunities for minorities or from complying
8 with applicable federal, State or local law:

9 (A) If the manufacturer intends to refuse to
10 approve the sale or transfer of all or a part of the
11 interest, then it shall, within 60 days from receipt of
12 the completed application forms generally utilized by
13 a manufacturer to conduct its review and a copy of all
14 agreements regarding the proposed transfer, send a
15 letter by certified mail, return receipt requested,
16 advising the franchisee of any refusal to approve the
17 sale or transfer of all or part of the interest and
18 shall state that the dealer only has 30 days from the
19 receipt of the notice to file with the Motor Vehicle
20 Review Board a written protest against the proposed
21 action. The notice shall set forth specific criteria
22 used to evaluate the prospective transferee and the
23 grounds for refusing to approve the sale or transfer to
24 that transferee. Within 30 days from the franchisee's
25 receipt of the manufacturer's notice, the franchisee
26 may file with the Board a written protest against the

1 proposed action.

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

10 The manufacturer shall have the burden of proof to
11 establish that good cause exists to refuse to approve
12 the sale or transfer to the transferee. The
13 determination whether good cause exists to refuse to
14 approve the sale or transfer shall be made by the Board
15 under subdivisions (6) (B). The manufacturer shall not
16 refuse to approve the sale or transfer by a dealer or
17 an officer, partner, or stockholder of a franchise or
18 any part of the interest to any person or persons
19 before the hearing process is concluded as prescribed
20 by this Act, and thereafter if the Board determines
21 that the manufacturer has failed to meet its burden of
22 proof and that good cause does not exist to refuse to
23 approve the sale or transfer to the transferee.

24 (B) Good cause to refuse to approve such sale or
25 transfer under this Section is established when such
26 sale or transfer is to a transferee who would not

1 otherwise qualify for a new motor vehicle dealers
2 license under the Illinois Vehicle Code or such sale or
3 transfer is to a person or party who is not of good
4 moral character or does not meet the franchiser's
5 existing and reasonable capital standards and, with
6 consideration given to the volume of sales and service
7 of the dealership, uniformly applied minimum business
8 experience standards in the market area.

9 (7) to obtain money, goods, services, anything of
10 value, or any other benefit from any other person with whom
11 the motor vehicle dealer does business, on account of or in
12 relation to the transactions between the dealer and the
13 other person as compensation, except for services actually
14 rendered, unless such benefit is promptly accounted for and
15 transmitted to the motor vehicle dealer;

16 (8) to grant an additional franchise in the relevant
17 market area of an existing franchise of the same line make
18 or to relocate an existing motor vehicle dealership within
19 or into a relevant market area of an existing franchise of
20 the same line make. However, if the manufacturer wishes to
21 grant such an additional franchise to an independent person
22 in a bona fide relationship in which such person is
23 prepared to make a significant investment subject to loss
24 in such a dealership, or if the manufacturer wishes to
25 relocate an existing motor vehicle dealership, then the
26 manufacturer shall send a letter by certified mail, return

1 receipt requested, to each existing dealer or dealers of
2 the same line make whose relevant market area includes the
3 proposed location of the additional or relocated franchise
4 at least 60 days before the manufacturer grants an
5 additional franchise or relocates an existing franchise of
6 the same line make within or into the relevant market area
7 of an existing franchisee of the same line make. Each
8 notice shall set forth the specific grounds for the
9 proposed grant of an additional or relocation of an
10 existing franchise and shall state that the dealer has only
11 30 days from the date of receipt of the notice to file with
12 the Motor Vehicle Review Board a written protest against
13 the proposed action. Unless the parties agree upon the
14 grant or establishment of the additional or relocated
15 franchise within 30 days from the date the notice was
16 received by the existing franchisee of the same line make
17 or any person entitled to receive such notice, the
18 franchisee or other person may file with the Board a
19 written protest against the grant or establishment of the
20 proposed additional or relocated franchise.

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

1 of intention to grant or establish the proposed additional
2 or relocated franchise and to the protesting dealer or
3 dealers of the same line make whose relevant market area
4 includes the proposed location of the additional or
5 relocated franchise.

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

20 The determination whether good cause exists for
21 allowing the grant or establishment of an additional
22 franchise or relocated existing franchise, shall be made by
23 the Board under subsection (c) of Section 12 of this Act.
24 If the manufacturer seeks to enter into a contract,
25 agreement or other arrangement with any person,
26 establishing any additional motor vehicle dealership or

1 other facility, limited to the sale of factory repurchase
2 vehicles or late model vehicles, then the manufacturer
3 shall follow the notice procedures set forth in this
4 Section and the determination whether good cause exists for
5 allowing the proposed agreement shall be made by the Board
6 under subsection (c) of Section 12, with the manufacturer
7 having the burden of proof.

8 A. (Blank).

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

21 C. This Section does not apply to the relocation of
22 an existing dealership or franchise in a county having
23 a population of more than 300,000 persons when the new
24 location is within the dealer's current relevant
25 market area, provided the new location is more than 7
26 miles from the nearest dealer of the same line make.

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

12 D. Nothing in this Section shall be construed to
13 prevent a franchiser from implementing affirmative
14 action programs providing business opportunities for
15 minorities or from complying with applicable federal,
16 State or local law;

17 (9) to require a motor vehicle dealer to assent to a
18 release, assignment, novation, waiver or estoppel which
19 would relieve any person from liability imposed by this
20 Act;

21 (10) to prevent or refuse to give effect to the
22 succession to the ownership or management control of a
23 dealership by any legatee under the will of a dealer or to
24 an heir under the laws of descent and distribution of this
25 State unless the franchisee has designated a successor to
26 the ownership or management control under the succession

1 provisions of the franchise. Unless the franchiser, having
2 the burden of proof, proves that the successor is a person
3 who is not of good moral character or does not meet the
4 franchiser's existing and reasonable capital standards
5 and, with consideration given to the volume of sales and
6 service of the dealership, uniformly applied minimum
7 business experience standards in the market area, any
8 designated successor of a dealer or franchisee may succeed
9 to the ownership or management control of a dealership
10 under the existing franchise if:

11 (i) The designated successor gives the
12 franchiser written notice by certified mail,
13 return receipt requested, of his or her intention
14 to succeed to the ownership of the dealer within 60
15 days of the dealer's death or incapacity; and

16 (ii) The designated successor agrees to be
17 bound by all the terms and conditions of the
18 existing franchise.

19 Notwithstanding the foregoing, in the event the motor
20 vehicle dealer or franchisee and manufacturer have duly
21 executed an agreement concerning succession rights prior
22 to the dealer's death or incapacitation, the agreement
23 shall be observed.

24 (A) If the franchiser intends to refuse to honor
25 the successor to the ownership of a deceased or
26 incapacitated dealer or franchisee under an existing

1 franchise agreement, the franchiser shall send a
2 letter by certified mail, return receipt requested, to
3 the designated successor within 60 days from receipt of
4 a proposal advising of its intent to refuse to honor
5 the succession and to discontinue the existing
6 franchise agreement and shall state that the
7 designated successor only has 30 days from the receipt
8 of the notice to file with the Motor Vehicle Review
9 Board a written protest against the proposed action.
10 The notice shall set forth the specific grounds for the
11 refusal to honor the succession and discontinue the
12 existing franchise agreement.

13 If notice of refusal is not timely served upon the
14 designated successor, the franchise agreement shall
15 continue in effect subject to termination only as
16 otherwise permitted by paragraph (6) of subsection (d)
17 of Section 4 of this Act.

18 Within 30 days from the date the notice was
19 received by the designated successor or any other
20 person entitled to notice, the designee or other person
21 may file with the Board a written protest against the
22 proposed action.

23 When a protest has been timely filed, the Board
24 shall enter an order, fixing a date (within 60 days of
25 the date of the order), time, and place of a hearing on
26 the protest, required under Sections 12 and 29 of this

1 Act, and send by certified mail, return receipt
2 requested, a copy of the order to the franchiser that
3 filed the notice of intention of the proposed action
4 and to the protesting designee or such other person.

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

18 (B) No manufacturer shall impose any conditions
19 upon honoring the succession and continuing the
20 existing franchise agreement with the designated
21 successor other than that the franchisee has
22 designated a successor to the ownership or management
23 control under the succession provisions of the
24 franchise, or that the designated successor is of good
25 moral character or meets the reasonable capital
26 standards and, with consideration given to the volume

1 of sales and service of the dealership, uniformly
2 applied minimum business experience standards in the
3 market area;

4 (11) to prevent or refuse to approve a proposal to
5 establish a successor franchise at a location previously
6 approved by the franchiser when submitted with the
7 voluntary termination by the existing franchisee unless
8 the successor franchisee would not otherwise qualify for a
9 new motor vehicle dealer's license under the Illinois
10 Vehicle Code or unless the franchiser, having the burden of
11 proof, proves that such proposed successor is not of good
12 moral character or does not meet the franchiser's existing
13 and reasonable capital standards and, with consideration
14 given to the volume of sales and service of the dealership,
15 uniformly applied minimum business experience standards in
16 the market area. However, when such a rejection of a
17 proposal is made, the manufacturer shall give written
18 notice of its reasons to the franchisee within 60 days of
19 receipt by the manufacturer of the proposal. However,
20 nothing herein shall be construed to prevent a franchiser
21 from implementing affirmative action programs providing
22 business opportunities for minorities, or from complying
23 with applicable federal, State or local law;

24 (12) to prevent or refuse to grant a franchise to a
25 person because such person owns, has investment in or
26 participates in the management of or holds a franchise for

1 the sale of another make or line of motor vehicles within 7
2 miles of the proposed franchise location in a county having
3 a population of more than 300,000 persons, or within 12
4 miles of the proposed franchise location in a county having
5 a population of less than 300,000 persons;

6 (13) to prevent or attempt to prevent any new motor
7 vehicle dealer from establishing any additional motor
8 vehicle dealership or other facility limited to the sale of
9 factory repurchase vehicles or late model vehicles or
10 otherwise offering for sale factory repurchase vehicles of
11 the same line make at an existing franchise by failing to
12 make available any contract, agreement or other
13 arrangement which is made available or otherwise offered to
14 any person; or

15 (14) to exercise a right of first refusal or other
16 right to acquire a franchise from a dealer, unless the
17 manufacturer:

18 (A) notifies the dealer in writing that it intends
19 to exercise its right to acquire the franchise not
20 later than 60 days after the manufacturer's or
21 distributor's receipt of a notice of the proposed
22 transfer from the dealer and all information and
23 documents reasonably and customarily required by the
24 manufacturer or distributor supporting the proposed
25 transfer;

26 (B) pays to the dealer the same or greater

1 consideration as the dealer has contracted to receive
2 in connection with the proposed transfer or sale of all
3 or substantially all of the dealership assets, stock,
4 or other ownership interest, including the purchase or
5 lease of all real property, leasehold, or improvements
6 related to the transfer or sale of the dealership. Upon
7 exercise of the right of first refusal or such other
8 right, the manufacturer or distributor shall have the
9 right to assign the lease or to convey the real
10 property;

11 (C) assumes all of the duties, obligations, and
12 liabilities contained in the agreements that were to be
13 assumed by the proposed transferee and with respect to
14 which the manufacturer or distributor exercised the
15 right of first refusal or other right to acquire the
16 franchise;

17 (D) reimburses the proposed transferee for all
18 reasonable expenses incurred in evaluating,
19 investigating, and negotiating the transfer of the
20 dealership prior to the manufacturer's or
21 distributor's exercise of its right of first refusal or
22 other right to acquire the dealership. For purposes of
23 this paragraph, "reasonable expenses" includes the
24 usual and customary legal and accounting fees charged
25 for similar work, as well as expenses associated with
26 the evaluation and investigation of any real property

1 on which the dealership is operated. The proposed
2 transferee shall submit an itemized list of its
3 expenses to the manufacturer or distributor not later
4 than 30 days after the manufacturer's or distributor's
5 exercise of the right of first refusal or other right
6 to acquire the motor vehicle franchise. The
7 manufacturer or distributor shall reimburse the
8 proposed transferee for its expenses not later than 90
9 days after receipt of the itemized list. A manufacturer
10 or distributor may request to be provided with the
11 itemized list of expenses before exercising the
12 manufacturer's or distributor's right of first
13 refusal.

14 Except as provided in this paragraph (14), neither the
15 selling dealer nor the manufacturer or distributor shall
16 have any liability to any person as a result of a
17 manufacturer or distributor exercising its right of first
18 refusal.

19 For the purpose of this paragraph, "proposed
20 transferee" means the person to whom the franchise would
21 have been transferred to, or was proposed to be transferred
22 to, had the right of first refusal or other right to
23 acquire the franchise not been exercised by the
24 manufacturer or distributor.

25 (f) It is deemed a violation for a manufacturer, a
26 distributor, a wholesaler, a distributor branch or division, a

1 factory branch or division, or a wholesale branch or division,
2 or officer, agent, broker, shareholder, except a shareholder of
3 1% or less of the outstanding shares of any class of securities
4 of a manufacturer, distributor, or wholesaler which is a
5 publicly traded corporation, or other representative, directly
6 or indirectly, to own or operate a place of business as a motor
7 vehicle franchisee or motor vehicle financing affiliate, or to
8 sell a new motor vehicle directly to a retail customer other
9 than through a franchised motor vehicle dealer, except that,
10 this subsection shall not prohibit:

11 (1) The ~~the~~ ownership or operation of a place of
12 business by a manufacturer, distributor, or wholesaler for
13 a period, not to exceed 18 months, during the transition
14 from one motor vehicle franchisee to another. †

15 (2) The ~~the~~ investment in a motor vehicle franchisee by
16 a manufacturer, distributor, or wholesaler if the
17 investment is for the sole purpose of enabling a partner or
18 shareholder in that motor vehicle franchisee to acquire an
19 interest in that motor vehicle franchisee and that partner
20 or shareholder is not otherwise employed by or associated
21 with the manufacturer, distributor, or wholesaler and
22 would not otherwise have the requisite capital investment
23 funds to invest in the motor vehicle franchisee, and has
24 the right to purchase the entire equity interest of the
25 manufacturer, distributor, or wholesaler in the motor
26 vehicle franchisee within a reasonable period of time not

1 to exceed 5 years, ~~for~~

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

8 (A) the manufacturer does not otherwise
9 manufacture, distribute, or sell motor vehicles as
10 defined under Section 1-217 of the Illinois Vehicle
11 Code;

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

14 (C) the manufacturer complies with all obligations
15 owed to dealers that are not owned, operated, or
16 controlled by the manufacturer, including, but not
17 limited to those obligations arising pursuant to
18 Section 6;

19 (D) to further avoid any acts or practices, the
20 effect of which may be to lessen or eliminate
21 competition, the manufacturer provides to dealers on
22 substantially equal terms access to all support for
23 completing repairs, including, but not limited to,
24 parts and assemblies, training, and technical service
25 bulletins, and other information concerning repairs
26 that the manufacturer provides to facilities that are

1 owned, operated, or controlled by the manufacturer;
2 and

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

12 (4) (A) Subject to the provisions of this paragraph, the
13 ownership or operation of up to 13 places of business in
14 this State by a qualified manufacturer.

15 (B) As used in this paragraph:

16 "Qualified manufacturer" means a manufacturer
17 that: (i) has at least one facility in this State that
18 provides repair service for vehicles subject to the
19 manufacturer's warranty; (ii) does not have a
20 franchise agreement with a new motor vehicle dealer
21 operating in this State; and (iii) was granted a new
22 vehicle dealer's license at any time before January 1,
23 2018 and the license is in effect as of January 1,
24 2018.

25 "Place of business" means any established place of
26 business or additional place of business licensed

1 under Article I of Chapter 5 of the Illinois Vehicle
2 Code. "Place of business" does not include a service
3 repair-only facility or other facility at which no new
4 motor vehicles are displayed for sale, ordered
5 (including taking of deposits), sold, offered for
6 sale, or delivered to customers.

7 "Substantial interest" means substantially all of
8 the business assets or 30% or more of the outstanding
9 voting shares of a manufacturer (unless the interest is
10 for investment purposes only).

11 (C) The exemption created by this paragraph shall
12 terminate as to a qualified manufacturer if:

13 (i) the qualified manufacturer sells or offers for
14 sale a new motor vehicle that does not have a 100%
15 electric power train at any time on or after January 1,
16 2018;

17 (ii) the qualified manufacturer displays or sells
18 at retail a new motor vehicle of a line-make not
19 manufactured by that qualified manufacturer;

20 (iii) another manufacturer acquires a substantial
21 interest in or assumes control and decision-making
22 authority of a qualified manufacturer; or

23 (iv) the qualified manufacturer acquires, merges
24 with, or in any way obtains a substantial interest in
25 or assumes control and decision-making authority of
26 another manufacturer that has either a franchisee or a

1 place of business in this State.

2 (D) If another manufacturer engages in a joint venture
3 with a qualified manufacturer, the exception created by
4 this paragraph shall not transfer or apply to the joint
5 venture.

6 (E) If another manufacturer merges with a qualified
7 manufacturer, the exception created by this paragraph
8 shall not transfer or apply to the other manufacturer's
9 vehicle models that were in production immediately prior to
10 the merger, but shall continue for the qualified
11 manufacturer's then existing and future vehicle models
12 that would otherwise qualify for the exception.

13 (F) If any entity that is not a manufacturer acquires a
14 substantial interest in or assumes control and
15 decision-making authority of a qualified manufacturer, the
16 number of places of business allowed under this paragraph
17 shall be limited to 6 places of business that sell only
18 that brand of new motor vehicles sold by the qualified
19 manufacturer prior to any such acquisition.

20 (G) An acquiring entity shall not be considered a
21 manufacturer for purposes of item (iii) or (iv) of
22 subparagraph (C) or subparagraph (D), (E), or (F) if, at
23 the time of the acquisition or assumption of control: (i)
24 the manufacturing of motor vehicles is not a substantial
25 portion of the acquiring entity's business; and (ii) it has
26 not released any production version of a motor vehicle to

1 the general public anywhere in the world.

2 (H) Except as otherwise provided in subparagraph (I),
3 if any manufacturer operates in contravention of this
4 subsection (f), including, but not limited to, operation
5 under an exception created by this paragraph that no longer
6 applies by operation of subparagraphs (C) through (F), the
7 manufacturer shall be deemed to have surrendered any motor
8 vehicle licenses, and all supplemental licenses, to the
9 State, and shall immediately cease operating its places of
10 business in this State.

11 (I) Notwithstanding any provision in this Act to the
12 contrary, any motor vehicle dealer located within the
13 relevant market area of a place of business operated by a
14 manufacturer in violation of this subsection (f) may bring
15 an action before the Motor Vehicle Review Board as provided
16 in this Act to enforce the provisions of this subsection
17 (f), regardless of line makes operated by such motor
18 vehicle dealer.

19 If a qualified manufacturer is found to have displayed
20 a new motor vehicle for sale, taken an order for a new
21 motor vehicle (including the taking of a deposit), sold,
22 offered to sell, or delivered a new motor vehicle to a
23 customer other than at a licensed place of business or as
24 may otherwise be permitted under Section 5-102.1 of the
25 Illinois Vehicle Code, the Secretary of State shall issue
26 an administrative citation for each such violation with a

1 penalty of \$2,500 per violation for a first offense, \$5,000
2 for a second offense within a 36-month period, \$10,000 for
3 a third offense within a 36-month period, and \$20,000 for a
4 4th offense within a 36-month period. Upon a fourth offense
5 within a 36-month period, the matter shall be set for an
6 administrative hearing before the Secretary of State, who
7 may impose additional penalties as he or she deems
8 appropriate. Each vehicle displayed for sale, ordered,
9 sold, offered for sale, or delivered in violation of this
10 paragraph constitutes a separate offense. For repeated and
11 willful violations by a manufacturer, the Secretary of
12 State shall consider the circumstances and maliciousness
13 of the violations and may impose additional penalties,
14 including suspension, revocation, cancellation, or
15 nonrenewal of the manufacturer's dealer licenses. The
16 penalties prescribed in this subparagraph (I) are in
17 addition to any other criminal or administrative penalties
18 that may be imposed under this Act.

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

1 dealer, the renewal of a franchise of an existing dealer, the
2 approval of the relocation of an existing dealer's facility, or
3 the approval of the sale or transfer of the ownership of a
4 franchise on the willingness of a dealer, proposed new dealer,
5 or owner of an interest in the dealership facility to enter
6 into a site control agreement or exclusive use agreement unless
7 separate and reasonable consideration was offered and accepted
8 for that agreement.

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

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

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

23 (h) For purposes of this subsection:

24 "Successor manufacturer" means any motor vehicle
25 manufacturer that, on or after January 1, 2009, acquires,
26 succeeds to, or assumes any part of the business of another

1 manufacturer, referred to as the "predecessor manufacturer",
2 as the result of any of the following:

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

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

12 (iii) The discontinuance of the sale of the product
13 line.

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

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

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

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

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

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

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

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

24 In the event that a successor manufacturer attempts to
25 enter into a same line make franchise with any person or to
26 permit the relocation of any existing line make franchise under

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

8 (Source: P.A. 99-143, eff. 7-27-15; 99-844, eff. 8-19-16;
9 100-201, eff. 8-18-17; 100-308, eff. 8-24-17; 100-863, eff.
10 8-14-18.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.