

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 Consumer Fraud and Deceptive Business
5 Practices Act is amended by changing Section 10a as follows:

6 (815 ILCS 505/10a) (from Ch. 121 1/2, par. 270a)

7 Sec. 10a. Action for actual damages.

8 (a) Any person who suffers actual damage as a result of a
9 violation of this Act committed by any other person may bring
10 an action against such person. The court, in its discretion
11 may award actual economic damages or any other relief which
12 the court deems proper; provided, however, that no award of
13 punitive damages may be assessed under this Section against a
14 party defendant who is a new vehicle dealer or used vehicle
15 dealer within the meaning of Chapter 5 of the Illinois Vehicle
16 Code or who is the holder of a retail installment contract
17 within the meaning of Section 2.12 of the Motor Vehicle Retail
18 Installment Sales Act, unless the conduct engaged in was
19 willful or intentional and done with evil motive or reckless
20 indifference to the rights of others. Proof of a public
21 injury, a pattern, or an effect on consumers and the public
22 interest generally shall be required in order to state a cause
23 of action under this Section against a party defendant who is a

1 new vehicle dealer or used vehicle dealer within the meaning
2 of Chapter 5 of the Illinois Vehicle Code or who is the holder
3 of a retail installment contract within the meaning of Section
4 2.12 of the Motor Vehicle Retail Installment Sales Act. Proof
5 of such public injury may be shown by any one of the following
6 factors:

7 (1) Violation of a statute that has a public interest
8 impact.

9 (2) Repeated acts prior to the act involving the
10 plaintiff.

11 (3) Potential for repetition.

12 (b) Such action may be commenced in the county in which the
13 person against whom it is brought resides, has his principal
14 place of business, or is doing business, or in the county where
15 the transaction or any substantial portion thereof occurred.

16 (c) Except as provided in subsections (f), (g), and (h) of
17 this Section, in any action brought by a person under this
18 Section, the Court may grant injunctive relief where
19 appropriate and may award, in addition to the relief provided
20 in this Section, reasonable attorney's fees and costs to the
21 prevailing party.

22 (d) Upon commencement of any action brought under this
23 Section the plaintiff shall mail a copy of the complaint or
24 other initial pleading to the Attorney General and, upon entry
25 of any judgment or order in the action, shall mail a copy of
26 such judgment or order to the Attorney General.

1 (e) Any action for damages under this Section shall be
2 forever barred unless commenced within 3 years after the cause
3 of action accrued; provided that, whenever any action is
4 brought by the Attorney General or a State's Attorney for a
5 violation of this Act, the running of the foregoing statute of
6 limitations, with respect to every private right of action for
7 damages which is based in whole or in part on any matter
8 complained of in said action by the Attorney General or
9 State's Attorney, shall be suspended during the pendency
10 thereof, and for one year thereafter.

11 (f) At any time more than 30 days before the commencement
12 of trial, a party, who is a new vehicle dealer or used vehicle
13 dealer within the meaning of Chapter 5 of the Illinois Vehicle
14 Code or who is the holder of a retail installment contract
15 within the meaning of Section 2.12 of the Motor Vehicle Retail
16 Installment Sales Act and who is defending a claim under this
17 Act, may serve upon the party seeking relief under this Act an
18 offer to allow judgment to be taken against the defending
19 party to the effect specified in the offer with costs then
20 accrued. If within 10 days after service of the offer, the
21 offeree serves written notice that the offer is accepted,
22 either party may then file the offer and notice of acceptance
23 together with proof of service of the notice; the court shall
24 then enter judgment. An offer not accepted shall be deemed
25 withdrawn and evidence of the offer is not admissible except
26 in a proceeding to determine costs. When a party seeking

1 relief under this Act does not accept an offer filed with the
2 clerk and served upon the attorney for that party more than 30
3 days before the commencement of trial and when that party
4 fails to obtain a judgment in an amount more than the total
5 offer of settlement, that party shall forfeit and the court
6 may not award any compensation for attorney's fees and costs
7 incurred after the date of the offer.

8 (g) At any time more than 30 days before the commencement
9 of trial, a party who is seeking relief under this Act from a
10 new vehicle dealer or used vehicle dealer within the meaning
11 of Chapter 5 of the Illinois Vehicle Code or from the holder of
12 a retail installment contract within the meaning of Section
13 2.12 of the Motor Vehicle Retail Installment Sales Act may
14 serve the dealer or holder an offer to allow judgment to be
15 taken against the dealer or holder to the effect specified in
16 the offer with costs then accrued. If within 10 days after
17 service of the offer, the offeree serves written notice that
18 the offer is accepted, either party may then file the offer and
19 notice of acceptance together with proof of service of the
20 notice; the court shall then enter judgment. An offer not
21 accepted shall be deemed withdrawn and evidence of the offer
22 is not admissible except in a proceeding to determine costs.
23 When a dealer or holder does not accept an offer filed with the
24 clerk and served upon the attorney for the dealer or holder
25 more than 30 days before the commencement of trial and if the
26 party seeking relief against a dealer or holder obtains a

1 judgment in an amount equal to or in excess of the offer
2 amount, the party seeking relief shall be paid interest on the
3 offer amount at the rate as provided in Section 2-1303 of the
4 Code of Civil Procedure from the date of the offer until the
5 judgment is paid.

6 (h) At least 30 days prior to the filing of an action under
7 this Section, a party who is seeking relief shall serve a
8 written notice of the nature of the alleged violation and
9 demand for relief upon the prospective party, who is a new
10 vehicle dealer or used vehicle dealer within the meaning of
11 Chapter 5 of the Illinois Vehicle Code or who is the holder of
12 a retail installment contract within the meaning of Section
13 2.12 of the Motor Vehicle Retail Installment Sales Act,
14 against whom such action will be commenced. Any person
15 receiving such a demand for relief may, within 30 days of
16 service of the demand for relief, submit a written offer of
17 settlement, which offer is to be exclusive of attorney's fees,
18 to the party serving the notice and demand. The party who is
19 seeking relief must certify in any cause of action that the
20 notice and demand was served upon the named defendants and the
21 substance of their response, if any. If the offer of
22 settlement is rejected in writing by the party who is seeking
23 relief, then, in any subsequent action, the court shall deny
24 any award of attorney's fees and costs requested by the party
25 seeking relief under this Act incurred after the rejection of
26 the written offer of settlement, if the judgment is less than

1 the amount contained within the offer of settlement. All
2 written offers of settlement under this subsection shall be
3 presumed to be offered without prejudice in compromise of a
4 disputed matter.

5 (i) No action can be brought under this Section against a
6 person as a result of an over collection of any tax by such
7 person to the extent such over collected tax is remitted to a
8 government entity or agency. For purposes of this Section, a
9 tax is remitted to a governmental entity or agency when it is
10 paid or transferred to the government entity or agency, or
11 taken as a credit, allowance, or offset on a tax return or
12 other tax form (including any amount of commission or discount
13 taken by or allowed to a tax collector or taxpayer). This
14 subsection applies in addition to any other defense to an
15 action under this Act that may apply.

16 (Source: P.A. 91-270, eff. 1-1-00.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.