



Sen. Ann Gillespie

Filed: 3/23/2021

10200SB0227sam001

LRB102 02592 JLS 23734 a

1 AMENDMENT TO SENATE BILL 227

2 AMENDMENT NO. _____. Amend Senate Bill 227 by replacing
3 everything after the enacting clause with the following:

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

1 within the meaning of Section 2.12 of the Motor Vehicle Retail
2 Installment Sales Act, unless the conduct engaged in was
3 willful or intentional and done with evil motive or reckless
4 indifference to the rights of others. Proof of a public
5 injury, a pattern, or an effect on consumers and the public
6 interest generally shall be required in order to state a cause
7 of action under this Section against a party defendant who is a
8 new vehicle dealer or used vehicle dealer within the meaning
9 of Chapter 5 of the Illinois Vehicle Code or who is the holder
10 of a retail installment contract within the meaning of Section
11 2.12 of the Motor Vehicle Retail Installment Sales Act. Proof
12 of such public injury may be shown by any one of the following
13 factors:

14 (1) Violation of a statute that has a public interest
15 impact.

16 (2) Repeated acts prior to the act involving the
17 plaintiff.

18 (3) Potential for repetition.

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

23 (c) Except as provided in subsections (f), (g), and (h) of
24 this Section, in any action brought by a person under this
25 Section, the Court may grant injunctive relief where
26 appropriate and may award, in addition to the relief provided

1 in this Section, reasonable attorney's fees and costs to the
2 prevailing party.

3 (d) Upon commencement of any action brought under this
4 Section the plaintiff shall mail a copy of the complaint or
5 other initial pleading to the Attorney General and, upon entry
6 of any judgment or order in the action, shall mail a copy of
7 such judgment or order to the Attorney General.

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

18 (f) At any time more than 30 days before the commencement
19 of trial, a party, who is a new vehicle dealer or used vehicle
20 dealer within the meaning of Chapter 5 of the Illinois Vehicle
21 Code or who is the holder of a retail installment contract
22 within the meaning of Section 2.12 of the Motor Vehicle Retail
23 Installment Sales Act and who is defending a claim under this
24 Act, may serve upon the party seeking relief under this Act an
25 offer to allow judgment to be taken against the defending
26 party to the effect specified in the offer with costs then

1 accrued. If within 10 days after service of the offer, the
2 offeree serves written notice that the offer is accepted,
3 either party may then file the offer and notice of acceptance
4 together with proof of service of the notice; the court shall
5 then enter judgment. An offer not accepted shall be deemed
6 withdrawn and evidence of the offer is not admissible except
7 in a proceeding to determine costs. When a party seeking
8 relief under this Act does not accept an offer filed with the
9 clerk and served upon the attorney for that party more than 30
10 days before the commencement of trial and when that party
11 fails to obtain a judgment in an amount more than the total
12 offer of settlement, that party shall forfeit and the court
13 may not award any compensation for attorney's fees and costs
14 incurred after the date of the offer.

15 (g) At any time more than 30 days before the commencement
16 of trial, a party who is seeking relief under this Act from a
17 new vehicle dealer or used vehicle dealer within the meaning
18 of Chapter 5 of the Illinois Vehicle Code or from the holder of
19 a retail installment contract within the meaning of Section
20 2.12 of the Motor Vehicle Retail Installment Sales Act may
21 serve the dealer or holder an offer to allow judgment to be
22 taken against the dealer or holder to the effect specified in
23 the offer with costs then accrued. If within 10 days after
24 service of the offer, the offeree serves written notice that
25 the offer is accepted, either party may then file the offer and
26 notice of acceptance together with proof of service of the

1 notice; the court shall then enter judgment. An offer not
2 accepted shall be deemed withdrawn and evidence of the offer
3 is not admissible except in a proceeding to determine costs.
4 When a dealer or holder does not accept an offer filed with the
5 clerk and served upon the attorney for the dealer or holder
6 more than 30 days before the commencement of trial and if the
7 party seeking relief against a dealer or holder obtains a
8 judgment in an amount equal to or in excess of the offer
9 amount, the party seeking relief shall be paid interest on the
10 offer amount at the rate as provided in Section 2-1303 of the
11 Code of Civil Procedure from the date of the offer until the
12 judgment is paid.

13 (h) At least 30 days prior to the filing of an action under
14 this Section, a party who is seeking relief shall serve a
15 written notice of the nature of the alleged violation and
16 demand for relief upon the prospective party, who is a new
17 vehicle dealer or used vehicle dealer within the meaning of
18 Chapter 5 of the Illinois Vehicle Code or who is the holder of
19 a retail installment contract within the meaning of Section
20 2.12 of the Motor Vehicle Retail Installment Sales Act,
21 against whom such action will be commenced. Any person
22 receiving such a demand for relief may, within 30 days of
23 service of the demand for relief, submit a written offer of
24 settlement, which offer is to be exclusive of attorney's fees,
25 to the party serving the notice and demand. The party who is
26 seeking relief must certify in any cause of action that the

1 notice and demand was served upon the named defendants and the
2 substance of their response, if any. If the offer of
3 settlement is rejected in writing by the party who is seeking
4 relief, then, in any subsequent action, the court shall deny
5 any award of attorney's fees and costs requested by the party
6 seeking relief under this Act incurred after the rejection of
7 the written offer of settlement, if the judgment is less than
8 the amount contained within the offer of settlement. All
9 written offers of settlement under this subsection shall be
10 presumed to be offered without prejudice in compromise of a
11 disputed matter.

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

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

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."