

1 AN ACT concerning motor vehicles.

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

4 Article 1

5 Section 1-1. Short title. This Act may be cited as the
6 New Vehicle Buyer Protection Act of 2004.

7 Article 5

8 Section 5-5. Definitions. As used in this Article:

9 "Nonconformity" means a nonconformity that substantially
10 impairs the use, value, or safety of the new motor vehicle to
11 the buyer or lessee.

12 "New motor vehicle" means a new motor vehicle that is
13 bought or used primarily for personal, family, or household
14 purposes. "New motor vehicle" also means a new motor vehicle
15 with a gross vehicle weight under 10,000 pounds that is
16 bought or used primarily for business purposes by a person,
17 including a partnership, limited liability company,
18 corporation, association, or any other legal entity, to which
19 not more than 5 motor vehicles are registered in this State.

20 "New motor vehicle" includes the chassis, chassis cab, and
21 that portion of a motor home devoted to its propulsion, but
22 does not include any portion designed, used, or maintained
23 primarily for human habitation, a dealer-owned vehicle and a
24 "demonstrator" or other motor vehicle sold with a
25 manufacturer's new car warranty but does not include a
26 motorcycle or a motor vehicle that is not registered under
27 the Illinois Vehicle Code because it is to be operated or
28 used exclusively off the highways. A demonstrator is a
29 vehicle assigned by a dealer for the purpose of demonstrating

1 qualities and characteristics common to vehicles of the same
2 or similar model and type.

3 "Motor home" means a vehicular unit built on, or
4 permanently attached to, a self-propelled motor vehicle
5 chassis, chassis cab, or van, which becomes an integral part
6 of the completed vehicle, designed for human habitation for
7 recreational or emergency occupancy.

8 Section 5-10. Presumption. It shall be presumed that a
9 reasonable number of attempts have been made to conform a new
10 motor vehicle to the applicable express warranties if, within
11 18 months from delivery to the buyer or 18,000 miles on the
12 odometer of the vehicle, whichever occurs first, one or more
13 of the following occurs:

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

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

26 (3) The vehicle is out of service by reason of
27 repair of nonconformities by the manufacturer or its
28 agents for a cumulative total of more than 30 calendar
29 days since delivery of the vehicle to the buyer. The
30 30-day limit shall be extended only if repairs cannot be
31 performed due to conditions beyond the control of the
32 manufacturer or its agents. The buyer shall be required
33 to directly notify the manufacturer under subdivisions

1 (1) and (2) only if the manufacturer has clearly and
2 conspicuously disclosed to the buyer, with the warranty
3 or the owner's manual, the provisions of this Act,
4 including the requirement that the buyer must notify the
5 manufacturer directly under subdivisions (1) and (2). The
6 notification, if required, shall be sent to the address,
7 if any, specified clearly and conspicuously by the
8 manufacturer in the warranty or owner's manual. This
9 presumption shall be a rebuttable presumption affecting
10 the burden of proof, and it may be asserted by the buyer
11 in any civil action, including an action in small claims
12 court, or other formal or informal proceeding.

13 Section 5-15. Assertion of presumption; qualified
14 third-party dispute resolution process. If a qualified
15 third-party dispute resolution process exists, and the buyer
16 receives timely notification in writing of the availability
17 of that qualified third-party dispute resolution process with
18 a description of its operation and effect, the presumption in
19 Section 5-10 may not be asserted by the buyer until after the
20 buyer has initially resorted to the qualified third-party
21 dispute resolution process as required in Section 5-20.
22 Notification of the availability of the qualified third-party
23 dispute resolution process is not timely if the buyer suffers
24 any prejudice resulting from any delay in giving the
25 notification. If a qualified third-party dispute resolution
26 process does not exist, or if the buyer is dissatisfied with
27 that third-party decision, or if the manufacturer or its
28 agent neglects to promptly fulfill the terms of the qualified
29 third-party dispute resolution process decision after the
30 decision is accepted by the buyer, the buyer may assert the
31 presumption provided in Section 5-10 in an action to enforce
32 the buyer's rights under Section 5-30. The findings and
33 decision of a qualified third-party dispute resolution

1 process shall be admissible in evidence in the action without
2 further foundation. Any period of limitation of actions under
3 any federal or State law with respect to any person shall be
4 extended for a period equal to the number of days between the
5 date a complaint is filed with a third-party dispute
6 resolution process and the date of its decision or the date
7 before which the manufacturer or its agent is required by the
8 decision to fulfill its terms if the decision is accepted by
9 the buyer, whichever occurs later.

10 Section 5-20. Elements of qualified third-party dispute
11 resolution process. A qualified third-party dispute
12 resolution process is one that does all of the following:

13 (1) Complies with the minimum requirements of the
14 Federal Trade Commission for informal dispute settlement
15 procedures as set forth in Part 703 of Title 16 of the
16 Code of Federal Regulations.

17 (2) Renders decisions that are binding on the
18 manufacturer if the buyer elects to accept the decision.

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

23 (4) Provides arbitrators who are assigned to decide
24 disputes with copies of, and instruction in, the
25 provisions of the Federal Trade Commission's regulations
26 in Part 703 of Title 16 of the Code of Federal
27 Regulations, Article 2 of the Uniform Commercial Code,
28 and this Act.

29 (5) Requires the manufacturer, when the process
30 orders, under the terms of this Act, either that the
31 nonconforming motor vehicle be replaced if the buyer
32 consents to this remedy or that restitution be made to
33 the buyer, to replace the motor vehicle or make

1 restitution in accordance with Section 5-30.

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

7 (7) Takes into account, in rendering decisions, all
8 legal and equitable factors, including, but not limited
9 to, the written warranty, the rights and remedies
10 conferred in regulations of the Federal Trade Commission
11 contained in Part 703 of Title 16 of the Code of Federal
12 Regulations, Article 2 of the Uniform Commercial Code,
13 this Act, and any other equitable considerations
14 appropriate in the circumstances. Nothing in this Act
15 requires that, to be certified as a qualified third-party
16 dispute resolution process under this Section, decisions
17 of the process must consider or provide remedies in the
18 form of awards of punitive damages, attorney's fees, or
19 consequential damages under Section 5-35 including, but
20 not limited to, reasonable repair, towing, and rental car
21 costs actually incurred by the buyer.

22 (8) Requires that no arbitrator deciding a dispute
23 may be a party to the dispute and that no other person,
24 including an employee, agent, or dealer for the
25 manufacturer, may be allowed to participate substantively
26 in the merits of any dispute with the arbitrator unless
27 the buyer is also allowed to participate. Nothing in this
28 subdivision (8) prohibits any member of an arbitration
29 board from deciding a dispute.

30 (9) Obtains and maintains certification under
31 Article 10.

32 Section 5-25. Sale of transferred vehicles.

33 (a) Except as provided in subsection (b), no person may

1 sell, either at wholesale or retail, lease, or transfer a
2 motor vehicle transferred by a buyer or lessee to a
3 manufacturer under Section 5-30 or a similar law of any other
4 state, unless the nature of the nonconformity experienced by
5 the original buyer or lessee is clearly and conspicuously
6 disclosed to the prospective buyer, lessee, or transferee,
7 the nonconformity is corrected, and the manufacturer warrants
8 to the new buyer, lessee, or transferee in writing for a
9 period of one year that the motor vehicle is free of that
10 nonconformity.

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

17 Section 5-30. Replacement or restitution.

18 (a) If the manufacturer or its representative in this
19 State is unable to service or repair a new motor vehicle to
20 conform to the applicable express warranties after a
21 reasonable number of attempts, the manufacturer shall either
22 promptly replace the new motor vehicle in accordance with
23 subsection (b) or promptly make restitution to the buyer in
24 accordance with subsection (c). However, the buyer may elect
25 restitution in lieu of replacement, and in no event shall the
26 buyer be required by the manufacturer to accept a replacement
27 vehicle.

28 (b) In the case of replacement, the manufacturer shall
29 replace the buyer's vehicle with a new motor vehicle
30 substantially identical to the vehicle replaced. The
31 replacement vehicle shall be accompanied by all express and
32 implied warranties that normally accompany new motor vehicles
33 of that specific kind. The manufacturer also shall pay for,

1 or to, the buyer the amount of any use tax, license fees,
2 registration fees, and other official fees which the buyer is
3 obligated to pay in connection with the replacement, plus any
4 incidental damages to which the buyer is entitled under
5 Section 5-35, including, but not limited to, reasonable
6 repair, towing, and rental car costs actually incurred by the
7 buyer.

8 (c) In the case of restitution, the manufacturer shall
9 make restitution in an amount equal to the actual price paid
10 or payable by the buyer, including any charges for
11 transportation and manufacturer-installed options, but
12 excluding nonmanufacturer items installed by a dealer or the
13 buyer, and including any collateral charges such as use tax,
14 license fees, registration fees, and other official fees,
15 plus any incidental damages to which the buyer is entitled
16 under Section 5-35, including, but not limited to, reasonable
17 repair, towing, and rental car costs actually incurred by the
18 buyer.

19 (d) When the manufacturer replaces the new motor vehicle
20 under subsection (b), the buyer shall only be liable to pay
21 the manufacturer an amount directly attributable to use by
22 the buyer of the replaced vehicle before the buyer first
23 delivered the vehicle to the manufacturer or distributor, or
24 its authorized service and repair facility for correction of
25 the problem that gave rise to the nonconformity. When
26 restitution is made under subsection (c), the amount to be
27 paid by the manufacturer to the buyer may be reduced by the
28 manufacturer by that amount directly attributable to use by
29 the buyer before the buyer first delivered the vehicle to the
30 manufacturer or distributor, or its authorized service and
31 repair facility for correction of the problem that gave rise
32 to the nonconformity. The amount directly attributable to use
33 by a buyer shall be determined by multiplying the actual
34 price of the new motor vehicle paid or payable by the buyer,

1 including any charges for transportation and
2 manufacturer-installed options, by a fraction having as its
3 denominator 120,000 and having as its numerator the number of
4 miles traveled by the new motor vehicle before the buyer
5 first delivered the vehicle to the manufacturer or
6 distributor, or its authorized service and repair facility
7 for correction of the problem that gave rise to the
8 nonconformity. Nothing in this Section in any way limits the
9 rights or remedies available to the buyer under any other
10 law.

11 Section 5-35. Damages; attorney's fees and costs; civil
12 penalty.

13 (a) Except as otherwise provided in this Section, if the
14 buyer establishes a violation of Section 5-30, the buyer
15 shall recover damages and reasonable attorney's fees and
16 costs, and may recover a civil penalty of up to 2 times the
17 amount of damages.

18 (b) If the manufacturer maintains a qualified
19 third-party dispute resolution process which substantially
20 complies with this Act, the manufacturer shall not be liable
21 for any civil penalty under this Section.

22 (c) After the occurrence of the events giving rise to
23 the presumption established in Section 5-30, the buyer may
24 serve upon the manufacturer a written notice requesting that
25 the manufacturer comply with Section 5-30. If the buyer fails
26 to serve the notice, the manufacturer is not liable for a
27 civil penalty under this Section.

28 (d) If the buyer serves the notice described in
29 subsection (c) and the manufacturer complies with Section
30 5-30 within 30 days of the service of that notice, the
31 manufacturer is not liable for a civil penalty under this
32 Section.

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Article 10

Section 10-5. Definitions. As used in this Article, unless the context requires otherwise:

Except as otherwise provided in Section 10-30, "new motor vehicle" means a new motor vehicle as defined in Article 5.

"Manufacturer" a manufacturer or distributor as defined in Section 5-109 of the Illinois Vehicle Code.

"Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with Section 5-20 and this Article and which has been certified by the Attorney General under this Article.

Section 10-10. Program for certifying third-party dispute resolution process. The Attorney General shall establish a program for certifying each third-party dispute resolution process used for the arbitration of disputes under Section 5-15. In establishing the program, the Attorney General shall do all of the following:

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

(2) Establish a set of minimum standards which shall be used to determine whether a third-party dispute resolution process is in substantial compliance with Section 5-20 and this Article.

(3) Prescribe the information which each manufacturer or other entity that operates a third-party dispute resolution process shall provide the Attorney General in the application for certification. In prescribing the information to accompany the application for certification, the Attorney General shall require the manufacturer or other entity to provide only that information which the Attorney General finds is reasonably necessary to enable the Attorney General to

1 determine whether the third-party dispute resolution
2 process is in substantial compliance with Section 5-20
3 and this Article.

4 (4) Prescribe the information that each qualified
5 third-party dispute resolution process shall provide the
6 Attorney General, and the time intervals at which the
7 information shall be required, to enable the Attorney
8 General to determine whether the qualified third-party
9 dispute resolution process continues to operate in
10 substantial compliance with Section 5-20 and this
11 Article.

12 Section 10-15. Establishment of qualified third-party
13 dispute resolution process.

14 (a) Each manufacturer may establish, or otherwise make
15 available to buyers or lessees of new motor vehicles, a
16 qualified third-party dispute resolution process for the
17 resolution of disputes under Section 5-15. A manufacturer
18 that itself operates the third-party dispute resolution
19 process shall apply to the Attorney General for certification
20 of that process. If the manufacturer makes the third-party
21 dispute resolution process available to buyers or lessees of
22 new motor vehicles through contract or other arrangement with
23 another entity, that entity shall apply to the Attorney
24 General for certification. An entity that operates a
25 third-party dispute resolution process for more than one
26 manufacturer shall make a separate application for
27 certification for each manufacturer that uses that entity's
28 third-party dispute resolution process. The application for
29 certification shall be accompanied by the information
30 prescribed by the Attorney General.

31 (b) The Attorney General shall review the application
32 and accompanying information and, after conducting an onsite
33 inspection, shall determine whether the third-party dispute

1 resolution process is in substantial compliance with Section
2 5-20 and this Article. If the Attorney General determines
3 that the process is in substantial compliance, the Attorney
4 General shall certify the process. If the Attorney General
5 determines that the process is not in substantial compliance,
6 the Attorney General shall deny certification and shall
7 state, in writing, the reasons for denial and the
8 modifications in the operation of the process that are
9 required in order for the process to be certified.

10 (c) The Attorney General shall make a final
11 determination whether to certify a third-party dispute
12 resolution process or to deny certification not later than 90
13 calendar days following the date the Attorney General accepts
14 the application for certification as complete.

15 Section 10-20. Review.

16 (a) The Attorney General, in accordance with the time
17 intervals set forth in subdivision (4) of Section 10-10, but
18 at least once annually, shall review the operation and
19 performance of each qualified third-party dispute resolution
20 process and determine, using the information provided the
21 Attorney General under subdivision (4) of Section 10-10 and
22 the monitoring and inspection information described in
23 subsection (c) of Section 10-25, whether the process is
24 operating in substantial compliance with Section 5-20 and
25 this Article. If the Attorney General determines that the
26 process is in substantial compliance, the certification shall
27 remain in effect.

28 (b) If the Attorney General determines that the process
29 is not in substantial compliance with Section 5-20 or this
30 Article, the Attorney General shall issue a notice of
31 decertification to the entity which operates the process and
32 shall send a copy of that notice to any manufacturer affected
33 by the decertification. The notice of decertification shall

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

5 (c) A notice of decertification shall take effect 180
6 calendar days following the date the notice is served on the
7 manufacturer or other entity which uses the process that the
8 Attorney General has determined is not in substantial
9 compliance with Section 5-20 or this Article. The Attorney
10 General shall withdraw the notice of decertification before
11 its effective date if the Attorney General determines, after
12 a public hearing, that the manufacturer or other entity which
13 uses the process has made the modifications in the operation
14 of the process required in the notice of decertification and
15 is in substantial compliance with Section 5-20 and this
16 Article.

17 Section 10-25. Duties of Attorney General.

18 (a) In addition to any other requirements of this
19 Article, the Attorney General shall do all of the following:

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

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

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

1 (A) Onsite inspections of each qualified
2 third-party dispute resolution process not less
3 frequently than twice annually.

4 (B) Investigation of complaints from consumers
5 regarding the operation of qualified third-party
6 dispute resolution processes and analyses of
7 representative samples of complaints against each
8 process.

9 (C) Analyses of the annual surveys required by
10 subdivision (2).

11 (4) Notify the Secretary of State of the failure of
12 a manufacturer to honor a decision of a qualified
13 third-party dispute resolution process to enable the
14 Secretary of State to take appropriate enforcement action
15 against the manufacturer under Section 5-501 of the
16 Illinois Vehicle Code.

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

24 (6) Adopt rules as necessary and appropriate to
25 implement this Article and Section 5-20.

26 (b) Protection of the public shall be the highest
27 priority for the Attorney General in exercising its
28 certification, regulatory, and disciplinary functions.
29 Whenever the protection of the public is inconsistent with
30 other interests sought to be promoted, the protection of the
31 public shall be paramount.

32 Section 10-30. Fees.

33 (a) The Secretary of State shall, in accordance with

1 this Section, administer the collection of fees for the
2 purposes of fully funding the administration of this Article.

3 (b) Fees collected under this Section shall be deposited
4 in the Third-Party Dispute Resolution Fund, a special fund
5 which is created in the State treasury and shall be used,
6 subject to appropriation, exclusively to pay the expenses
7 incurred by the Attorney General in administering this
8 Article and the expenses incurred by the Secretary of State
9 in collecting the fees.

10 (c) Beginning July 1, 2006, and on or before May 1 of
11 each calendar year thereafter, every manufacturer shall file
12 with the Secretary of State a statement of the number of
13 motor vehicles sold, leased, or otherwise distributed by or
14 for the manufacturer in this State during the preceding
15 calendar year, and shall, upon written notice delivered to
16 the manufacturer by certified mail, return receipt requested,
17 pay to the Secretary of State a fee, not to exceed \$1 for
18 each motor vehicle sold, leased, or distributed by or for the
19 manufacturer in this State during the preceding calendar
20 year. Not more than \$1 shall be charged, collected, or
21 received from any one or more manufacturers under this
22 subsection (c) with respect to the same motor vehicle.

23 (d) The fee required by subsection (c) is due and
24 payable not later than 30 days after the manufacturer has
25 received notice of the amount due and is delinquent after
26 that time. A penalty of 10% of the amount delinquent shall be
27 added to that amount if the delinquency continues for more
28 than 30 days. If a manufacturer fails to file the statement
29 required by subdivision (b) by the date specified, the
30 Secretary of State shall assess the amount due from the
31 manufacturer by using as the number of motor vehicles sold,
32 leased, or otherwise distributed by or for the manufacturer
33 in this State during the preceding calendar year the total
34 number of new registrations of all motor vehicles sold,

1 leased, or otherwise distributed by or for the manufacturer
2 during the preceding calendar year.

3 (e) On or before February 1 of each year, the Attorney
4 General shall notify the Secretary of State of the dollar
5 amount necessary to fully fund the program established by
6 this Article during the following fiscal year. The Secretary
7 of State shall use this information in calculating the
8 amounts of the fees to be collected from manufacturers under
9 this Section.

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

16 (g) The Secretary of State may adopt rules to implement
17 this Section. The rules shall include, at a minimum, a
18 formula for calculating the fee for each motor vehicle and
19 the total amount of fees to be collected from each
20 manufacturer.

21 Article 80

22 Section 80-5. Applicability. This Act applies to new
23 motor vehicles beginning with the model year following the
24 effective date of this Act.

25 Article 90

26 Section 90-5. The State Finance Act is amended by adding
27 Section 5.595 as follows:

28 (30 ILCS 105/5.595 new)

29 Sec. 5.595. The Third-Party Dispute Resolution Fund.

1 Section 90-7. The Retailers' Occupation Tax Act is
2 amended by changing Section 6 as follows:

3 (35 ILCS 120/6) (from Ch. 120, par. 445)

4 Sec. 6. Credit memorandum or refund. If it appears, after
5 claim therefor filed with the Department, that an amount of
6 tax or penalty or interest has been paid which was not due
7 under this Act, whether as the result of a mistake of fact or
8 an error of law, except as hereinafter provided, then the
9 Department shall issue a credit memorandum or refund to the
10 person who made the erroneous payment or, if that person died
11 or became a person under legal disability, to his or her
12 legal representative, as such. For purposes of this Section,
13 the tax is deemed to be erroneously paid by a retailer when
14 the manufacturer of a motor vehicle sold by the retailer
15 accepts the return of that automobile and refunds to the
16 purchaser the selling price of that vehicle as provided in
17 the New Vehicle Buyer Protection Act or the New Vehicle Buyer
18 Protection Act of 2004. When a motor vehicle is returned for
19 a refund of the purchase price under the New Vehicle Buyer
20 Protection Act or the New Vehicle Buyer Protection Act of
21 2004, the Department shall issue a credit memorandum or a
22 refund for the amount of tax paid by the retailer under this
23 Act attributable to the initial sale of that vehicle. Claims
24 submitted by the retailer are subject to the same
25 restrictions and procedures provided for in this Act. If it
26 is determined that the Department should issue a credit
27 memorandum or refund, the Department may first apply the
28 amount thereof against any tax or penalty or interest due or
29 to become due under this Act or under the Use Tax Act, the
30 Service Occupation Tax Act, the Service Use Tax Act, any
31 local occupation or use tax administered by the Department,
32 Section 4 of the Water Commission Act of 1985, subsections
33 (b), (c) and (d) of Section 5.01 of the Local Mass Transit

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

1 Act, such claim may be filed at any time prior to the
2 expiration of the period agreed upon.

3 No claim may be allowed for any amount paid to the
4 Department, whether paid voluntarily or involuntarily, if
5 paid in total or partial liquidation of an assessment which
6 had become final before the claim for credit or refund to
7 recover the amount so paid is filed with the Department, or
8 if paid in total or partial liquidation of a judgment or
9 order of court. No credit may be allowed or refund made for
10 any amount paid by or collected from any claimant unless it
11 appears (a) that the claimant bore the burden of such amount
12 and has not been relieved thereof nor reimbursed therefor and
13 has not shifted such burden directly or indirectly through
14 inclusion of such amount in the price of the tangible
15 personal property sold by him or her or in any manner
16 whatsoever; and that no understanding or agreement, written
17 or oral, exists whereby he or she or his or her legal
18 representative may be relieved of the burden of such amount,
19 be reimbursed therefor or may shift the burden thereof; or
20 (b) that he or she or his or her legal representative has
21 repaid unconditionally such amount to his or her vendee (1)
22 who bore the burden thereof and has not shifted such burden
23 directly or indirectly, in any manner whatsoever; (2) who, if
24 he or she has shifted such burden, has repaid unconditionally
25 such amount to his own vendee; and (3) who is not entitled to
26 receive any reimbursement therefor from any other source than
27 from his or her vendor, nor to be relieved of such burden in
28 any manner whatsoever. No credit may be allowed or refund
29 made for any amount paid by or collected from any claimant
30 unless it appears that the claimant has unconditionally
31 repaid, to the purchaser, any amount collected from the
32 purchaser and retained by the claimant with respect to the
33 same transaction under the Use Tax Act.

34 Any credit or refund that is allowed under this Section

1 shall bear interest at the rate and in the manner specified
2 in the Uniform Penalty and Interest Act.

3 In case the Department determines that the claimant is
4 entitled to a refund, such refund shall be made only from
5 such appropriation as may be available for that purpose. If
6 it appears unlikely that the amount appropriated would permit
7 everyone having a claim allowed during the period covered by
8 such appropriation to elect to receive a cash refund, the
9 Department, by rule or regulation, shall provide for the
10 payment of refunds in hardship cases and shall define what
11 types of cases qualify as hardship cases.

12 If a retailer who has failed to pay retailers' occupation
13 tax on gross receipts from retail sales is required by the
14 Department to pay such tax, such retailer, without filing any
15 formal claim with the Department, shall be allowed to take
16 credit against such retailers' occupation tax liability to
17 the extent, if any, to which such retailer has paid an amount
18 equivalent to retailers' occupation tax or has paid use tax
19 in error to his or her vendor or vendors of the same tangible
20 personal property which such retailer bought for resale and
21 did not first use before selling it, and no penalty or
22 interest shall be charged to such retailer on the amount of
23 such credit. However, when such credit is allowed to the
24 retailer by the Department, the vendor is precluded from
25 refunding any of that tax to the retailer and filing a claim
26 for credit or refund with respect thereto with the
27 Department. The provisions of this amendatory Act shall be
28 applied retroactively, regardless of the date of the
29 transaction.

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

31 Section 90-10. The Illinois Vehicle Code is amended by
32 changing Sections 5-104.2 and 5-501 as follows:

1 (625 ILCS 5/5-104.2)

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

3 (a) Every manufacturer shall be prohibited from
 4 reselling any motor vehicle that has been finally ordered,
 5 determined, or adjudicated as having a nonconformity under
 6 the New Vehicle Buyer Protection Act or a similar law of any
 7 state, territory, or country, and that the manufacturer
 8 repurchased or replaced because of the nonconformity, unless
 9 the manufacturer has corrected the nonconformity and issues a
 10 disclosure statement prior to resale stating that the vehicle
 11 was repurchased or replaced under the New Vehicle Buyer
 12 Protection Act or similar law of any other state, territory,
 13 or country; identifying the nonconformity; and warranting
 14 that the nonconformity has been corrected. The disclosure
 15 statement must accompany the vehicle through the first retail
 16 purchase.

17 (b) "Nonconformity" refers to a new vehicle's failure to
 18 conform to all express warranties applicable to the vehicle,
 19 which failure substantially impairs the use, market value, or
 20 safety of the vehicle.

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

23 "IMPORTANT

24 Vehicle Identification Number (VIN): (Insert VIN Number);
 25 Year: (Insert Year); Make (Insert Make); Model: (Insert
 26 Model). This vehicle was previously sold as new. It was
 27 subsequently ordered as having a nonconformity by final
 28 decision of court proceeding or State run arbitration.
 29 It was subsequently repurchased by its manufacturer
 30 because it did not conform to the manufacturer's express
 31 warranty and the nonconformity was not cured within a
 32 reasonable time as provided by Illinois law. The
 33 following nonconformities have been corrected (a minimum
 34 of 5 numbered lines shall be provided to describe the

1 nonconformity or nonconformities)."

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

4 (d) The sale, lease, or transfer of motor vehicles that
5 have been determined to have a nonconformity under the New
6 Vehicle Buyer Protection Act of 2004 shall be governed by
7 that Act.

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

9 (625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

10 Sec. 5-501. Denial, suspension or revocation or
11 cancellation of a license. (a) The license of a person issued
12 under this Chapter may be denied, revoked or suspended if the
13 Secretary of State finds that the applicant, or the officer,
14 director, shareholder having a ten percent or greater
15 ownership interest in the corporation, owner, partner,
16 trustee, manager, employee or the licensee has:

17 1. Violated this Act;

18 2. Made any material misrepresentation to the Secretary
19 of State in connection with an application for a license,
20 junking certificate, salvage certificate, title or
21 registration;

22 3. Committed a fraudulent act in connection with
23 selling, bartering, exchanging, offering for sale or
24 otherwise dealing in vehicles, chassis, essential parts, or
25 vehicle shells;

26 4. As a new vehicle dealer has no contract with a
27 manufacturer or enfranchised distributor to sell that new
28 vehicle in this State;

29 5. Not maintained an established place of business as
30 defined in this Code;

31 6. Failed to file or produce for the Secretary of State
32 any application, report, document or other pertinent books,
33 records, documents, letters, contracts, required to be filed

1 or produced under this Code or any rule or regulation made by
2 the Secretary of State pursuant to this Code;

3 7. Previously had, within 3 years, such a license
4 denied, suspended, revoked, or cancelled under the provisions
5 of subsection (c) (2) of this Section;

6 8. Has committed in any calendar year 3 or more
7 violations, as determined in any civil or criminal
8 proceeding, of any one or more of the following Acts:

9 a. the "Consumer Finance Act";

10 b. the "Consumer Installment Loan Act";

11 c. the "Retail Installment Sales Act";

12 d. the "Motor Vehicle Retail Installment Sales Act";

13 e. "An Act in relation to the rate of interest and other
14 charges in connection with sales on credit and the lending of
15 money", approved May 24, 1879, as amended;

16 f. "An Act to promote the welfare of wage-earners by
17 regulating the assignment of wages, and prescribing a penalty
18 for the violation thereof", approved July 1, 1935, as
19 amended;

20 g. Part 8 of Article XII of the Code of Civil Procedure;

21 or

22 h. the "Consumer Fraud Act";

23 9. Failed to pay any fees or taxes due under this Act,
24 or has failed to transmit any fees or taxes received by him
25 for transmittal by him to the Secretary of State or the State
26 of Illinois;

27 10. Converted an abandoned vehicle;

28 11. Used a vehicle identification plate or number
29 assigned to a vehicle other than the one to which originally
30 assigned;

31 12. Violated the provisions of Chapter 5 of this Act, as
32 amended;

33 13. Violated the provisions of Chapter 4 of this Act, as
34 amended;

1 14. Violated the provisions of Chapter 3 of this Act, as
2 amended;

3 15. Violated Section 21-2 of the Criminal Code of 1961,
4 Criminal Trespass to Vehicles;

5 16. Made or concealed a material fact in connection with
6 his application for a license;

7 17. Acted in the capacity of a person licensed or acted
8 as a licensee under this Chapter without having a license
9 therefor;

10 18. Failed to pay, within 90 days after a final
11 judgment, any fines assessed against the licensee pursuant to
12 an action brought under Section 5-404;

13 19. Willfully violated the terms of any warranty
14 responsibilities as set forth in the New Vehicle Buyer
15 Protection Act of 2004.

16 (b) In addition to other grounds specified in this
17 Chapter, the Secretary of State, on complaint of the
18 Department of Revenue, shall refuse the issuance of renewal
19 of a license, or suspend or revoke such license, for any of
20 the following violations of the "Retailers' Occupation Tax
21 Act":

22 1. Failure to make a tax return;

23 2. The filing of a fraudulent return;

24 3. Failure to pay all or part of any tax or penalty
25 finally determined to be due;

26 4. Failure to comply with the bonding requirements of
27 the "Retailers' Occupation Tax Act".

28 (c) Cancellation of a license.

29 1. The license of a person issued under this Chapter may
30 be cancelled by the Secretary of State prior to its
31 expiration in any of the following situations:

32 A. When a license is voluntarily surrendered, by the
33 licensed person; or

34 B. If the business enterprise is a sole proprietorship,

1 which is not a franchised dealership, when the sole
2 proprietor dies or is imprisoned for any period of time
3 exceeding 30 days; or

4 C. If the license was issued to the wrong person or
5 corporation, or contains an error on its face. If any person
6 above whose license has been cancelled wishes to apply for
7 another license, whether during the same license year or any
8 other year, that person shall be treated as any other new
9 applicant and the cancellation of the person's prior license
10 shall not, in and of itself, be a bar to the issuance of a
11 new license.

12 2. The license of a person issued under this Chapter may
13 be cancelled without a hearing when the Secretary of State is
14 notified that the applicant, or any officer, director,
15 shareholder having a 10 per cent or greater ownership
16 interest in the corporation, owner, partner, trustee,
17 manager, employee or member of the applicant or the licensee
18 has been convicted of any felony involving the selling,
19 bartering, exchanging, offering for sale, or otherwise
20 dealing in vehicles, chassis, essential parts, vehicle
21 shells, or ownership documents relating to any of the above
22 items.

23 (Source: P.A. 86-820.)

24 Section 90-15. The New Vehicle Buyer Protection Act is
25 amended by changing Section 8 as follows:

26 (815 ILCS 380/8) (from Ch. 121 1/2, par. 1208)

27 Sec. 8. This Act shall apply to motor vehicles beginning
28 with the model year following the effective date of this Act,
29 except that this Act does not apply to any motor vehicle to
30 which the New Vehicle Buyer Protection Act of 2004 applies.

31 (Source: P.A. 83-768.)

1 Article 99

2 Section 99-5. Effective date. This Act takes effect on

3 January 1, 2005.

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30 ILCS 105/5.595 new

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

625 ILCS 5/5-104.2

625 ILCS 5/5-501 from Ch. 95 1/2, par. 5-501

815 ILCS 380/8 from Ch. 121 1/2, par. 1208