



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0956

Introduced 2/3/2005, by Rep. Kenneth Dunkin

SYNOPSIS AS INTRODUCED:

625 ILCS 5/5-501
815 ILCS 710/4

from Ch. 95 1/2, par. 5-501
from Ch. 121 1/2, par. 754

Amends the Illinois Vehicle Code. Provides that the Secretary of State, on complaint of the Motor Vehicle Review Board, shall refuse to issue or renew a vehicle dealer's license, or shall suspend or revoke that dealer's license, if costs or fees assessed under the Motor Vehicle Franchise Act have remained unpaid for longer than 90 days after the dealer received from the Motor Vehicle Review Board actual notice and demand for the costs or fees. Amends the Motor Vehicle Franchise Act provision regarding unfair competition and practices. Provides that, when a vehicle manufacturer decides to establish or relocate a new sales franchise within the territory of an existing franchisee of that manufacturer, the manufacturer's written notice must state that the franchisee has only 30 days in which to file a written protest.

LRB094 06117 DRH 37654 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 5. The Illinois Vehicle Code is amended by changing
5 Section 5-501 as follows:

6 (625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

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

14 1. Violated this Act;

15 2. Made any material misrepresentation to the Secretary of
16 State in connection with an application for a license, junking
17 certificate, salvage certificate, title or registration;

18 3. Committed a fraudulent act in connection with selling,
19 bartering, exchanging, offering for sale or otherwise dealing
20 in vehicles, chassis, essential parts, or vehicle shells;

21 4. As a new vehicle dealer has no contract with a
22 manufacturer or enfranchised distributor to sell that new
23 vehicle in this State;

24 5. Not maintained an established place of business as
25 defined in this Code;

26 6. Failed to file or produce for the Secretary of State any
27 application, report, document or other pertinent books,
28 records, documents, letters, contracts, required to be filed or
29 produced under this Code or any rule or regulation made by the
30 Secretary of State pursuant to this Code;

31 7. Previously had, within 3 years, such a license denied,
32 suspended, revoked, or cancelled under the provisions of

1 subsection (c) (2) of this Section;

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

5 a. the "Consumer Finance Act";

6 b. the "Consumer Installment Loan Act";

7 c. the "Retail Installment Sales Act";

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

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

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

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

16 h. the "Consumer Fraud Act";

17 9. Failed to pay any fees or taxes due under this Act, or
18 has failed to transmit any fees or taxes received by him for
19 transmittal by him to the Secretary of State or the State of
20 Illinois;

21 10. Converted an abandoned vehicle;

22 11. Used a vehicle identification plate or number assigned
23 to a vehicle other than the one to which originally assigned;

24 12. Violated the provisions of Chapter 5 of this Act, as
25 amended;

26 13. Violated the provisions of Chapter 4 of this Act, as
27 amended;

28 14. Violated the provisions of Chapter 3 of this Act, as
29 amended;

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

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

34 17. Acted in the capacity of a person licensed or acted as
35 a licensee under this Chapter without having a license
36 therefor;

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

4 (b) In addition to other grounds specified in this Chapter,
5 the Secretary of State, on complaint of the Department of
6 Revenue, shall refuse the issuance or ~~of~~ renewal of a license,
7 or suspend or revoke such license, for any of the following
8 violations of the "Retailers' Occupation Tax Act":

- 9 1. Failure to make a tax return;
- 10 2. The filing of a fraudulent return;
- 11 3. Failure to pay all or part of any tax or penalty finally
12 determined to be due;
- 13 4. Failure to comply with the bonding requirements of the
14 "Retailers' Occupation Tax Act".

15 (b-1) In addition to other grounds specified in this
16 Chapter, the Secretary of State, on complaint of the Motor
17 Vehicle Review Board, shall refuse the issuance or renewal of a
18 license, or suspend or revoke that license, if costs or fees
19 assessed under Section 29 of the Motor Vehicle Franchise Act
20 have remained unpaid for a period in excess of 90 days after
21 the licensee received from the Motor Vehicle Board actual
22 notice and demand for the costs or fees.

23 (c) Cancellation of a license.

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

27 A. When a license is voluntarily surrendered, by the
28 licensed person; or

29 B. If the business enterprise is a sole proprietorship,
30 which is not a franchised dealership, when the sole proprietor
31 dies or is imprisoned for any period of time exceeding 30 days;
32 or

33 C. If the license was issued to the wrong person or
34 corporation, or contains an error on its face. If any person
35 above whose license has been cancelled wishes to apply for
36 another license, whether during the same license year or any

1 other year, that person shall be treated as any other new
2 applicant and the cancellation of the person's prior license
3 shall not, in and of itself, be a bar to the issuance of a new
4 license.

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

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

16 Section 10. The Motor Vehicle Franchise Act is amended by
17 changing Section 4 as follows:

18 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

19 Sec. 4. Unfair competition and practices.

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

26 (b) It shall be deemed a violation for any manufacturer,
27 factory branch, factory representative, distributor or
28 wholesaler, distributor branch, distributor representative or
29 motor vehicle dealer to engage in any action with respect to a
30 franchise which is arbitrary, in bad faith or unconscionable
31 and which causes damage to any of the parties or to the public.

32 (c) It shall be deemed a violation for a manufacturer, a
33 distributor, a wholesaler, a distributor branch or division, a
34 factory branch or division, or a wholesale branch or division,

1 or officer, agent or other representative thereof, to coerce,
2 or attempt to coerce, any motor vehicle dealer:

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

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

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

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

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

29 (2) to fail or refuse to advise or disclose to any
30 motor vehicle dealer having a franchise or selling
31 agreement, upon written request therefor, the basis upon
32 which new motor vehicles of the same line make are
33 allocated or distributed to motor vehicle dealers in the
34 State and the basis upon which the current allocation or
35 distribution is being made or will be made to such motor
36 vehicle dealer;

1 (3) to refuse to deliver in reasonable quantities and
2 within a reasonable time after receipt of dealer's order,
3 to any motor vehicle dealer having a franchise or selling
4 agreement for the retail sale of new motor vehicles sold or
5 distributed by such manufacturer, distributor, wholesaler,
6 distributor branch or division, factory branch or division
7 or wholesale branch or division, any such motor vehicles as
8 are covered by such franchise or selling agreement
9 specifically publicly advertised in the State by such
10 manufacturer, distributor, wholesaler, distributor branch
11 or division, factory branch or division, or wholesale
12 branch or division to be available for immediate delivery.
13 However, the failure to deliver any motor vehicle shall not
14 be considered a violation of this Act if such failure is
15 due to an act of God, a work stoppage or delay due to a
16 strike or labor difficulty, a shortage of materials, a lack
17 of manufacturing capacity, a freight embargo or other cause
18 over which the manufacturer, distributor, or wholesaler,
19 or any agent thereof has no control;

20 (4) to coerce, or attempt to coerce, any motor vehicle
21 dealer to enter into any agreement with such manufacturer,
22 distributor, wholesaler, distributor branch or division,
23 factory branch or division, or wholesale branch or
24 division, or officer, agent or other representative
25 thereof, or to do any other act prejudicial to the dealer
26 by threatening to reduce his allocation of motor vehicles
27 or cancel any franchise or any selling agreement existing
28 between such manufacturer, distributor, wholesaler,
29 distributor branch or division, or factory branch or
30 division, or wholesale branch or division, and the dealer.
31 However, notice in good faith to any motor vehicle dealer
32 of the dealer's violation of any terms or provisions of
33 such franchise or selling agreement or of any law or
34 regulation applicable to the conduct of a motor vehicle
35 dealer shall not constitute a violation of this Act;

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

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

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

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

30 (i) the business operations of the franchisee
31 have been abandoned or the franchisee has failed to
32 conduct customary sales and service operations
33 during customary business hours for at least 7
34 consecutive business days unless such closing is
35 due to an act of God, strike or labor difficulty or
36 other cause over which the franchisee has no

1 control; or

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

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

14 (B) If a manufacturer, distributor, wholesaler,
15 distributor branch or division, factory branch or
16 division or wholesale branch or division intends to
17 change substantially or modify the sales and service
18 obligations or capital requirements of a motor vehicle
19 dealer as a condition to extending or renewing the
20 existing franchise or selling agreement of such motor
21 vehicle dealer, it shall send a letter by certified
22 mail, return receipt requested, to the affected
23 franchisee at least 60 days before the date of
24 expiration of the franchise or selling agreement. Each
25 notice of proposed action shall include a detailed
26 statement setting forth the specific grounds for the
27 proposed action and shall state that the dealer has
28 only 30 days from receipt of the notice to file with
29 the Motor Vehicle Review Board a written protest
30 against the proposed action.

31 (C) Within 30 days from receipt of the notice under
32 subparagraphs (A) and (B), the franchisee may file with
33 the Board a written protest against the proposed
34 action.

35 When the protest has been timely filed, the Board
36 shall enter an order, fixing a date (within 60 days of

1 the date of the order), time, and place of a hearing on
2 the protest required under Sections 12 and 29 of this
3 Act, and send by certified mail, return receipt
4 requested, a copy of the order to the manufacturer that
5 filed the notice of intention of the proposed action
6 and to the protesting dealer or franchisee.

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

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

33 Good cause shall exist to cancel, terminate or fail
34 to offer a renewal or replacement franchise or selling
35 agreement to all franchisees of a line make if the
36 manufacturer permanently discontinues the manufacture

1 or assembly of motor vehicles of such line make.

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

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

31 (e) It shall be deemed a violation for a manufacturer, a
32 distributor, a wholesaler, a distributor branch or division or
33 officer, agent or other representative thereof:

34 (1) to resort to or use any false or misleading
35 advertisement in connection with his business as such
36 manufacturer, distributor, wholesaler, distributor branch

1 or division or officer, agent or other representative
2 thereof;

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

17 (3) to offer to sell or lease, or to sell or lease, any
18 new motor vehicle to any person, except a wholesaler,
19 distributor or manufacturer's employees at a lower actual
20 price therefor than the actual price offered and charged to
21 a motor vehicle dealer for the same model vehicle similarly
22 equipped or to utilize any device which results in such
23 lesser actual price. However, the provisions of this
24 paragraph shall not apply to sales to a motor vehicle
25 dealer for resale to any unit of the United States
26 Government, the State or any of its political subdivisions;

27 (4) to prevent or attempt to prevent by contract or
28 otherwise any motor vehicle dealer or franchisee from
29 changing the executive management control of the motor
30 vehicle dealer or franchisee unless the franchiser, having
31 the burden of proof, proves that such change of executive
32 management will result in executive management control by a
33 person or persons who are not of good moral character or
34 who do not meet the franchiser's existing and, with
35 consideration given to the volume of sales and service of
36 the dealership, uniformly applied minimum business

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

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

23 (6) to refuse to give effect to or prevent or attempt
24 to prevent by contract or otherwise any motor vehicle
25 dealer or any officer, partner or stockholder of any motor
26 vehicle dealer from selling or transferring any part of the
27 interest of any of them to any other person or persons or
28 party or parties unless such sale or transfer is to a
29 transferee who would not otherwise qualify for a new motor
30 vehicle dealers license under "The Illinois Vehicle Code"
31 or unless the franchiser, having the burden of proof,
32 proves that such sale or transfer is to a person or party
33 who is not of good moral character or does not meet the
34 franchiser's existing and reasonable capital standards
35 and, with consideration given to the volume of sales and
36 service of the dealership, uniformly applied minimum

1 business experience standards in the market area. However,
2 nothing herein shall be construed to prevent a franchiser
3 from implementing affirmative action programs providing
4 business opportunities for minorities or from complying
5 with applicable federal, State or local law:

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

25 When a protest has been timely filed, the Board
26 shall enter an order, fixing the date (within 60 days
27 of the date of such order), time, and place of a
28 hearing on the protest, required under Sections 12 and
29 29 of this Act, and send by certified mail, return
30 receipt requested, a copy of the order to the
31 manufacturer that filed notice of intention of the
32 proposed action and to the protesting franchisee.

33 The manufacturer shall have the burden of proof to
34 establish that good cause exists to refuse to approve
35 the sale or transfer to the transferee. The
36 determination whether good cause exists to refuse to

1 approve the sale or transfer shall be made by the Board
2 under subdivisions (6) (B). The manufacturer shall not
3 refuse to approve the sale or transfer by a dealer or
4 an officer, partner, or stockholder of a franchise or
5 any part of the interest to any person or persons
6 before the hearing process is concluded as prescribed
7 by this Act, and thereafter if the Board determines
8 that the manufacturer has failed to meet its burden of
9 proof and that good cause does not exist to refuse to
10 approve the sale or transfer to the transferee.

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

22 (7) to obtain money, goods, services, anything of
23 value, or any other benefit from any other person with whom
24 the motor vehicle dealer does business, on account of or in
25 relation to the transactions between the dealer and the
26 other person as compensation, except for services actually
27 rendered, unless such benefit is promptly accounted for and
28 transmitted to the motor vehicle dealer;

29 (8) to grant an additional franchise in the relevant
30 market area of an existing franchise of the same line make
31 or to relocate an existing motor vehicle dealership within
32 or into a relevant market area of an existing franchise of
33 the same line make. However, if the manufacturer wishes to
34 grant such an additional franchise to an independent person
35 in a bona fide relationship in which such person is
36 prepared to make a significant investment subject to loss

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

27 When a protest has been timely filed, the Board shall
28 enter an order fixing a date (within 60 days of the date of
29 the order), time, and place of a hearing on the protest,
30 required under Sections 12 and 29 of this Act, and send by
31 certified or registered mail, return receipt requested, a
32 copy of the order to the manufacturer that filed the notice
33 of intention to grant or establish the proposed additional
34 or relocated franchise and to the protesting dealer or
35 dealers of the same line make whose relevant market area
36 includes the proposed location of the additional or

1 relocated franchise.

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

16 The determination whether good cause exists for
17 allowing the grant or establishment of an additional
18 franchise or relocated existing franchise, shall be made by
19 the Board under subsection (c) of Section 12 of this Act.
20 If the manufacturer seeks to enter into a contract,
21 agreement or other arrangement with any person,
22 establishing any additional motor vehicle dealership or
23 other facility, limited to the sale of factory repurchase
24 vehicles or late model vehicles, then the manufacturer
25 shall follow the notice procedures set forth in this
26 Section and the determination whether good cause exists for
27 allowing the proposed agreement shall be made by the Board
28 under subsection (c) of Section 12, with the manufacturer
29 having the burden of proof.

30 A. (Blank).

31 B. For the purposes of this Section, appointment of
32 a successor motor vehicle dealer at the same location
33 as its predecessor, or within 2 miles of such location,
34 or the relocation of an existing dealer or franchise
35 within 2 miles of the relocating dealer's or
36 franchisee's existing location, shall not be construed

1 as a grant, establishment or the entering into of an
2 additional franchise or selling agreement, or a
3 relocation of an existing franchise. The reopening of a
4 motor vehicle dealership that has not been in operation
5 for 18 months or more shall be deemed the grant of an
6 additional franchise or selling agreement.

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

24 D. Nothing in this Section shall be construed to
25 prevent a franchiser from implementing affirmative
26 action programs providing business opportunities for
27 minorities or from complying with applicable federal,
28 State or local law;

29 (9) to require a motor vehicle dealer to assent to a
30 release, assignment, novation, waiver or estoppel which
31 would relieve any person from liability imposed by this
32 Act;

33 (10) to prevent or refuse to give effect to the
34 succession to the ownership or management control of a
35 dealership by any legatee under the will of a dealer or to
36 an heir under the laws of descent and distribution of this

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

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

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

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

26 (A) If the franchiser intends to refuse to honor
27 the successor to the ownership of a deceased or
28 incapacitated dealer or franchisee under an existing
29 franchise agreement, the franchiser shall send a
30 letter by certified mail, return receipt requested, to
31 the designated successor within 60 days from receipt of
32 a proposal advising of its intent to refuse to honor
33 the succession and to discontinue the existing
34 franchise agreement and shall state that the
35 designated successor only has 30 days from the receipt
36 of the notice to file with the Motor Vehicle Review

1 Board a written protest against the proposed action.
2 The notice shall set forth the specific grounds for the
3 refusal to honor the succession and discontinue the
4 existing franchise agreement.

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

10 Within 30 days from the date the notice was
11 received by the designated successor or any other
12 person entitled to notice, the designee or other person
13 may file with the Board a written protest against the
14 proposed action.

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

23 The manufacturer shall have the burden of proof to
24 establish that good cause exists to refuse to honor the
25 succession and discontinue the existing franchise
26 agreement. The determination whether good cause exists
27 to refuse to honor the succession shall be made by the
28 Board under subdivision (B) of this paragraph (10). The
29 manufacturer shall not refuse to honor the succession
30 or discontinue the existing franchise agreement before
31 the hearing process is concluded as prescribed by this
32 Act, and thereafter if the Board determines that it has
33 failed to meet its burden of proof and that good cause
34 does not exist to refuse to honor the succession and
35 discontinue the existing franchise agreement.

36 (B) No manufacturer shall impose any conditions

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

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

32 (12) to prevent or refuse to grant a franchise to a
33 person because such person owns, has investment in or
34 participates in the management of or holds a franchise for
35 the sale of another make or line of motor vehicles within 7
36 miles of the proposed franchise location in a county having

1 a population of more than 300,000 persons, or within 12
2 miles of the proposed franchise location in a county having
3 a population of less than 300,000 persons; or

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

13 (f) It is deemed a violation for a manufacturer, a
14 distributor, a wholesale, a distributor branch or division, a
15 factory branch or division, or a wholesale branch or division,
16 or officer, agent, broker, shareholder, except a shareholder of
17 1% or less of the outstanding shares of any class of securities
18 of a manufacturer, distributor, or wholesaler which is a
19 publicly traded corporation, or other representative, directly
20 or indirectly, to own or operate a place of business as a motor
21 vehicle franchisee or motor vehicle financing affiliate,
22 except that, this subsection shall not prohibit the ownership
23 or operation of a place of business by a manufacturer,
24 distributor, or wholesaler for a period, not to exceed 18
25 months, during the transition from one motor vehicle franchisee
26 to another; or the investment in a motor vehicle franchisee by
27 a manufacturer, distributor, or wholesaler if the investment is
28 for the sole purpose of enabling a partner or shareholder in
29 that motor vehicle franchisee to acquire an interest in that
30 motor vehicle franchisee and that partner or shareholder is not
31 otherwise employed by or associated with the manufacturer,
32 distributor, or wholesaler and would not otherwise have the
33 requisite capital investment funds to invest in the motor
34 vehicle franchisee, and has the right to purchase the entire
35 equity interest of the manufacturer, distributor, or
36 wholesaler in the motor vehicle franchisee within a reasonable

1 period of time not to exceed 5 years.

2 (Source: P.A. 90-655, eff. 7-30-98; 91-415, eff. 1-1-00;

3 91-485, eff. 1-1-00; 91-701, eff. 5-12-00.)