



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1440

Introduced 2/10/2005, by Rep. Rich Brauer

SYNOPSIS AS INTRODUCED:

815 ILCS 710/4

from Ch. 121 1/2, par. 754

Amends the Motor Vehicle Franchise Act. Provides that it is not a violation of the Act to relocate an existing dealership or franchise in a county having a population of less than 300,000 persons when the new location is within the dealer's current relevant market area, provided the new location is more than 10 (rather than 12) miles from the nearest dealer of the same line make. Provides that it shall be a violation for a manufacturer, a distributor, a wholesaler, a distributor branch or division or officer, agent or other representative to prevent or refuse to grant a franchise to a person because such person owns, has investment in or participates in the management of or holds a franchise for the sale of another make or line of motor vehicles within 7 miles of the proposed franchise location in a county having a population of more than 300,000 persons, or within 10 (rather than 12) miles of the proposed franchise location in a county having a population of less than 300,000 persons.

LRB094 07092 RXD 37237 b

1 AN ACT concerning business.

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

4 Section 5. The Motor Vehicle Franchise Act is amended by
5 changing Section 4 as follows:

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

7 Sec. 4. Unfair competition and practices.

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

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

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

25 (1) to accept, buy or order any motor vehicle or
26 vehicles, appliances, equipment, parts or accessories
27 therefor, or any other commodity or commodities or service
28 or services which such motor vehicle dealer has not
29 voluntarily ordered or requested except items required by
30 applicable local, state or federal law; or to require a
31 motor vehicle dealer to accept, buy, order or purchase such
32 items in order to obtain any motor vehicle or vehicles or

1 any other commodity or commodities which have been ordered
2 or requested by such motor vehicle dealer;

3 (2) to order or accept delivery of any motor vehicle
4 with special features, appliances, accessories or
5 equipment not included in the list price of the motor
6 vehicles as publicly advertised by the manufacturer
7 thereof, except items required by applicable law; or

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

11 (d) It shall be deemed a violation for a manufacturer, a
12 distributor, a wholesaler, a distributor branch or division, or
13 officer, agent or other representative thereof:

14 (1) to adopt, change, establish or implement a plan or
15 system for the allocation and distribution of new motor
16 vehicles to motor vehicle dealers which is arbitrary or
17 capricious or to modify an existing plan so as to cause the
18 same to be arbitrary or capricious;

19 (2) to fail or refuse to advise or disclose to any
20 motor vehicle dealer having a franchise or selling
21 agreement, upon written request therefor, the basis upon
22 which new motor vehicles of the same line make are
23 allocated or distributed to motor vehicle dealers in the
24 State and the basis upon which the current allocation or
25 distribution is being made or will be made to such motor
26 vehicle dealer;

27 (3) to refuse to deliver in reasonable quantities and
28 within a reasonable time after receipt of dealer's order,
29 to any motor vehicle dealer having a franchise or selling
30 agreement for the retail sale of new motor vehicles sold or
31 distributed by such manufacturer, distributor, wholesaler,
32 distributor branch or division, factory branch or division
33 or wholesale branch or division, any such motor vehicles as
34 are covered by such franchise or selling agreement
35 specifically publicly advertised in the State by such
36 manufacturer, distributor, wholesaler, distributor branch

1 or division, factory branch or division, or wholesale
2 branch or division to be available for immediate delivery.
3 However, the failure to deliver any motor vehicle shall not
4 be considered a violation of this Act if such failure is
5 due to an act of God, a work stoppage or delay due to a
6 strike or labor difficulty, a shortage of materials, a lack
7 of manufacturing capacity, a freight embargo or other cause
8 over which the manufacturer, distributor, or wholesaler,
9 or any agent thereof has no control;

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

26 (5) to require a franchisee to participate in an
27 advertising campaign or contest or any promotional
28 campaign, or to purchase or lease any promotional
29 materials, training materials, show room or other display
30 decorations or materials at the expense of the franchisee;

31 (6) to cancel or terminate the franchise or selling
32 agreement of a motor vehicle dealer without good cause and
33 without giving notice as hereinafter provided; to fail or
34 refuse to extend the franchise or selling agreement of a
35 motor vehicle dealer upon its expiration without good cause
36 and without giving notice as hereinafter provided; or, to

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

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

20 (i) the business operations of the franchisee
21 have been abandoned or the franchisee has failed to
22 conduct customary sales and service operations
23 during customary business hours for at least 7
24 consecutive business days unless such closing is
25 due to an act of God, strike or labor difficulty or
26 other cause over which the franchisee has no
27 control; or

28 (ii) the conviction of or plea of nolo
29 contendere by the motor vehicle dealer or any
30 operator thereof in a court of competent
31 jurisdiction to an offense punishable by
32 imprisonment for more than two years.

33 Each notice of proposed action shall include a
34 detailed statement setting forth the specific grounds
35 for the proposed cancellation, termination, or refusal
36 to extend or renew and shall state that the dealer has

1 only 30 days from receipt of the notice to file with
2 the Motor Vehicle Review Board a written protest
3 against the proposed action.

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

21 (C) Within 30 days from receipt of the notice under
22 subparagraphs (A) and (B), the franchisee may file with
23 the Board a written protest against the proposed
24 action.

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

33 The manufacturer shall have the burden of proof to
34 establish that good cause exists to cancel or
35 terminate, or fail to extend or renew the franchise or
36 selling agreement of a motor vehicle dealer or

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

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

23 Good cause shall exist to cancel, terminate or fail
24 to offer a renewal or replacement franchise or selling
25 agreement to all franchisees of a line make if the
26 manufacturer permanently discontinues the manufacture
27 or assembly of motor vehicles of such line make.

28 (E) The manufacturer may not cancel or terminate,
29 or fail to extend or renew a franchise or selling
30 agreement or change or modify the obligations of the
31 franchisee as a condition to offering a renewal,
32 replacement, or succeeding franchise or selling
33 agreement before the hearing process is concluded as
34 prescribed by this Act, and thereafter, if the Board
35 determines that the manufacturer has failed to meet its
36 burden of proof and that good cause does not exist to

1 allow the proposed action; or

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

21 (e) 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 resort to or use any false or misleading
25 advertisement in connection with his business as such
26 manufacturer, distributor, wholesaler, distributor branch
27 or division or officer, agent or other representative
28 thereof;

29 (2) to offer to sell or lease, or to sell or lease, any
30 new motor vehicle to any motor vehicle dealer at a lower
31 actual price therefor than the actual price offered to any
32 other motor vehicle dealer for the same model vehicle
33 similarly equipped or to utilize any device including, but
34 not limited to, sales promotion plans or programs which
35 result in such lesser actual price or fail to make
36 available to any motor vehicle dealer any preferential

1 pricing, incentive, rebate, finance rate, or low interest
2 loan program offered to competing motor vehicle dealers in
3 other contiguous states. However, the provisions of this
4 paragraph shall not apply to sales to a motor vehicle
5 dealer for resale to any unit of the United States
6 Government, the State or any of its political subdivisions;

7 (3) to offer to sell or lease, or to sell or lease, any
8 new motor vehicle to any person, except a wholesaler,
9 distributor or manufacturer's employees at a lower actual
10 price therefor than the actual price offered and charged to
11 a motor vehicle dealer for the same model vehicle similarly
12 equipped or to utilize any device which results in such
13 lesser actual price. 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 (4) to prevent or attempt to prevent by contract or
18 otherwise any motor vehicle dealer or franchisee from
19 changing the executive management control of the motor
20 vehicle dealer or franchisee unless the franchiser, having
21 the burden of proof, proves that such change of executive
22 management will result in executive management control by a
23 person or persons who are not of good moral character or
24 who do not meet the franchiser's existing and, with
25 consideration given to the volume of sales and service of
26 the dealership, uniformly applied minimum business
27 experience standards in the market area. However where the
28 manufacturer rejects a proposed change in executive
29 management control, the manufacturer shall give written
30 notice of his reasons to the dealer within 60 days of
31 notice to the manufacturer by the dealer of the proposed
32 change. If the manufacturer does not send a letter to the
33 franchisee by certified mail, return receipt requested,
34 within 60 days from receipt by the manufacturer of the
35 proposed change, then the change of the executive
36 management control of the franchisee shall be deemed

1 accepted as proposed by the franchisee, and the
2 manufacturer shall give immediate effect to such change;

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

13 (6) to refuse to give effect to or prevent or attempt
14 to prevent by contract or otherwise any motor vehicle
15 dealer or any officer, partner or stockholder of any motor
16 vehicle dealer from selling or transferring any part of the
17 interest of any of them to any other person or persons or
18 party or parties unless such sale or transfer is to a
19 transferee who would not otherwise qualify for a new motor
20 vehicle dealers license under "The Illinois Vehicle Code"
21 or unless the franchiser, having the burden of proof,
22 proves that such sale or transfer is to a person or party
23 who is not of good moral character or does not meet the
24 franchiser's existing and reasonable capital standards
25 and, with consideration given to the volume of sales and
26 service of the dealership, uniformly applied minimum
27 business experience standards in the market area. 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 (A) If the manufacturer intends to refuse to
33 approve the sale or transfer of all or a part of the
34 interest, then it shall, within 60 days from receipt of
35 the completed application forms generally utilized by
36 a manufacturer to conduct its review and a copy of all

1 agreements regarding the proposed transfer, send a
2 letter by certified mail, return receipt requested,
3 advising the franchisee of any refusal to approve the
4 sale or transfer of all or part of the interest and
5 shall state that the dealer only has 30 days from the
6 receipt of the notice to file with the Motor Vehicle
7 Review Board a written protest against the proposed
8 action. The notice shall set forth specific criteria
9 used to evaluate the prospective transferee and the
10 grounds for refusing to approve the sale or transfer to
11 that transferee. Within 30 days from the franchisee's
12 receipt of the manufacturer's notice, the franchisee
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 the date (within 60 days
17 of the date of such order), time, and place of a
18 hearing on the protest, required under Sections 12 and
19 29 of this Act, and send by certified mail, return
20 receipt requested, a copy of the order to the
21 manufacturer that filed notice of intention of the
22 proposed action and to the protesting franchisee.

23 The manufacturer shall have the burden of proof to
24 establish that good cause exists to refuse to approve
25 the sale or transfer to the transferee. The
26 determination whether good cause exists to refuse to
27 approve the sale or transfer shall be made by the Board
28 under subdivisions (6) (B). The manufacturer shall not
29 refuse to approve the sale or transfer by a dealer or
30 an officer, partner, or stockholder of a franchise or
31 any part of the interest to any person or persons
32 before the hearing process is concluded as prescribed
33 by this Act, and thereafter if the Board determines
34 that the manufacturer has failed to meet its burden of
35 proof and that good cause does not exist to refuse to
36 approve the sale or transfer to the transferee.

1 (B) Good cause to refuse to approve such sale or
2 transfer under this Section is established when such
3 sale or transfer is to a transferee who would not
4 otherwise qualify for a new motor vehicle dealers
5 license under "The Illinois Vehicle Code" or such sale
6 or transfer is to a person or party who is not of good
7 moral character or does not meet the franchiser's
8 existing and reasonable capital standards and, with
9 consideration given to the volume of sales and service
10 of the dealership, uniformly applied minimum business
11 experience standards in the market area.

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

19 (8) to grant an additional franchise in the relevant
20 market area of an existing franchise of the same line make
21 or to relocate an existing motor vehicle dealership within
22 or into a relevant market area of an existing franchise of
23 the same line make. However, if the manufacturer wishes to
24 grant such an additional franchise to an independent person
25 in a bona fide relationship in which such person is
26 prepared to make a significant investment subject to loss
27 in such a dealership, or if the manufacturer wishes to
28 relocate an existing motor vehicle dealership, then the
29 manufacturer shall send a letter by certified mail, return
30 receipt requested, to each existing dealer or dealers of
31 the same line make whose relevant market area includes the
32 proposed location of the additional or relocated franchise
33 at least 60 days before the manufacturer grants an
34 additional franchise or relocates an existing franchise of
35 the same line make within or into the relevant market area
36 of an existing franchisee of the same line make. Each

1 notice shall set forth the specific grounds for the
2 proposed grant of an additional or relocation of an
3 existing franchise. Unless the parties agree upon the grant
4 or establishment of the additional or relocated franchise
5 within 30 days from the date the notice was received by the
6 existing franchisee of the same line make or any person
7 entitled to receive such notice, the franchisee or other
8 person may file with the Board a written protest against
9 the grant or establishment of the proposed additional or
10 relocated franchise and shall state that the dealer only
11 has 30 days from the receipt of the notice to file with the
12 Motor Vehicle Review Board a written protest against the
13 proposed action.

14 When a protest has been timely filed, the Board shall
15 enter an order fixing a date (within 60 days of the date of
16 the order), time, and place of a hearing on the protest,
17 required under Sections 12 and 29 of this Act, and send by
18 certified or registered mail, return receipt requested, a
19 copy of the order to the manufacturer that filed the notice
20 of intention to grant or establish the proposed additional
21 or relocated franchise and to the protesting dealer or
22 dealers of the same line make whose relevant market area
23 includes the proposed location of the additional or
24 relocated franchise.

25 When more than one protest is filed against the grant
26 or establishment of the additional or relocated franchise
27 of the same line make, the Board may consolidate the
28 hearings to expedite disposition of the matter. The
29 manufacturer shall have the burden of proof to establish
30 that good cause exists to allow the grant or establishment
31 of the additional or relocated franchise. The manufacturer
32 may not grant or establish the additional franchise or
33 relocate the existing franchise before the hearing process
34 is concluded as prescribed by this Act, and thereafter if
35 the Board determines that the manufacturer has failed to
36 meet its burden of proof and that good cause does not exist

1 to allow the grant or establishment of the additional
2 franchise or relocation of the existing franchise.

3 The determination whether good cause exists for
4 allowing the grant or establishment of an additional
5 franchise or relocated existing franchise, shall be made by
6 the Board under subsection (c) of Section 12 of this Act.
7 If the manufacturer seeks to enter into a contract,
8 agreement or other arrangement with any person,
9 establishing any additional motor vehicle dealership or
10 other facility, limited to the sale of factory repurchase
11 vehicles or late model vehicles, then the manufacturer
12 shall follow the notice procedures set forth in this
13 Section and the determination whether good cause exists for
14 allowing the proposed agreement shall be made by the Board
15 under subsection (c) of Section 12, with the manufacturer
16 having the burden of proof.

17 A. (Blank).

18 B. For the purposes of this Section, appointment of
19 a successor motor vehicle dealer at the same location
20 as its predecessor, or within 2 miles of such location,
21 or the relocation of an existing dealer or franchise
22 within 2 miles of the relocating dealer's or
23 franchisee's existing location, shall not be construed
24 as a grant, establishment or the entering into of an
25 additional franchise or selling agreement, or a
26 relocation of an existing franchise. The reopening of a
27 motor vehicle dealership that has not been in operation
28 for 18 months or more shall be deemed the grant of an
29 additional franchise or selling agreement.

30 C. This Section does not apply to the relocation of
31 an existing dealership or franchise in a county having
32 a population of more than 300,000 persons when the new
33 location is within the dealer's current relevant
34 market area, provided the new location is more than 7
35 miles from the nearest dealer of the same line make.
36 This Section does not apply to the relocation of an

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

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

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

20 (10) to prevent or refuse to give effect to the
21 succession to the ownership or management control of a
22 dealership by any legatee under the will of a dealer or to
23 an heir under the laws of descent and distribution of this
24 State unless the franchisee has designated a successor to
25 the ownership or management control under the succession
26 provisions of the franchise. Unless the franchiser, having
27 the burden of proof, proves that the successor is a person
28 who is not of good moral character or does not meet the
29 franchiser's existing and reasonable capital standards
30 and, with consideration given to the volume of sales and
31 service of the dealership, uniformly applied minimum
32 business experience standards in the market area, any
33 designated successor of a dealer or franchisee may succeed
34 to the ownership or management control of a dealership
35 under the existing franchise if:

36 (i) The designated successor gives the

1 franchiser written notice by certified mail,
2 return receipt requested, of his or her intention
3 to succeed to the ownership of the dealer within 60
4 days of the dealer's death or incapacity; and

5 (ii) The designated successor agrees to be
6 bound by all the terms and conditions of the
7 existing franchise.

8 Notwithstanding the foregoing, in the event the motor
9 vehicle dealer or franchisee and manufacturer have duly
10 executed an agreement concerning succession rights prior
11 to the dealer's death or incapacitation, the agreement
12 shall be observed.

13 (A) If the franchiser intends to refuse to honor
14 the successor to the ownership of a deceased or
15 incapacitated dealer or franchisee under an existing
16 franchise agreement, the franchiser shall send a
17 letter by certified mail, return receipt requested, to
18 the designated successor within 60 days from receipt of
19 a proposal advising of its intent to refuse to honor
20 the succession and to discontinue the existing
21 franchise agreement and shall state that the
22 designated successor only has 30 days from the receipt
23 of the notice to file with the Motor Vehicle Review
24 Board a written protest against the proposed action.
25 The notice shall set forth the specific grounds for the
26 refusal to honor the succession and discontinue the
27 existing franchise agreement.

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

33 Within 30 days from the date the notice was
34 received by the designated successor or any other
35 person entitled to notice, the designee or other person
36 may file with the Board a written protest against the

1 proposed action.

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

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

23 (B) No manufacturer shall impose any conditions
24 upon honoring the succession and continuing the
25 existing franchise agreement with the designated
26 successor other than that the franchisee has
27 designated a successor to the ownership or management
28 control under the succession provisions of the
29 franchise, or that the designated successor is of good
30 moral character or meets the reasonable capital
31 standards and, with consideration given to the volume
32 of sales and service of the dealership, uniformly
33 applied minimum business experience standards in the
34 market area;

35 (11) to prevent or refuse to approve a proposal to
36 establish a successor franchise at a location previously

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

19 (12) to prevent or refuse to grant a franchise to a
20 person because such person owns, has investment in or
21 participates in the management of or holds a franchise for
22 the sale of another make or line of motor vehicles within 7
23 miles of the proposed franchise location in a county having
24 a population of more than 300,000 persons, or within 10 ~~12~~
25 miles of the proposed franchise location in a county having
26 a population of less than 300,000 persons; or

27 (13) to prevent or attempt to prevent any new motor
28 vehicle dealer from establishing any additional motor
29 vehicle dealership or other facility limited to the sale of
30 factory repurchase vehicles or late model vehicles or
31 otherwise offering for sale factory repurchase vehicles of
32 the same line make at an existing franchise by failing to
33 make available any contract, agreement or other
34 arrangement which is made available or otherwise offered to
35 any person.

36 (f) It is deemed a violation for a manufacturer, a

1 distributor, a wholesale, a distributor branch or division, a
2 factory branch or division, or a wholesale branch or division,
3 or officer, agent, broker, shareholder, except a shareholder of
4 1% or less of the outstanding shares of any class of securities
5 of a manufacturer, distributor, or wholesaler which is a
6 publicly traded corporation, or other representative, directly
7 or indirectly, to own or operate a place of business as a motor
8 vehicle franchisee or motor vehicle financing affiliate,
9 except that, this subsection shall not prohibit the ownership
10 or operation of a place of business by a manufacturer,
11 distributor, or wholesaler for a period, not to exceed 18
12 months, during the transition from one motor vehicle franchisee
13 to another; or the investment in a motor vehicle franchisee by
14 a manufacturer, distributor, or wholesaler if the investment is
15 for the sole purpose of enabling a partner or shareholder in
16 that motor vehicle franchisee to acquire an interest in that
17 motor vehicle franchisee and that partner or shareholder is not
18 otherwise employed by or associated with the manufacturer,
19 distributor, or wholesaler and would not otherwise have the
20 requisite capital investment funds to invest in the motor
21 vehicle franchisee, and has the right to purchase the entire
22 equity interest of the manufacturer, distributor, or
23 wholesaler in the motor vehicle franchisee within a reasonable
24 period of time not to exceed 5 years.

25 (Source: P.A. 90-655, eff. 7-30-98; 91-415, eff. 1-1-00;
26 91-485, eff. 1-1-00; 91-701, eff. 5-12-00.)