



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4628

by Rep. William B. Black

SYNOPSIS AS INTRODUCED:

815 ILCS 710/4

from Ch. 121 1/2, par. 754

Amends the Motor Vehicle Franchise Act. Provides that for a period of 4 years from the date a motor vehicle manufacturer acquires, succeeds to, or assumes any part of the business of a bankrupted manufacturer it is unlawful for the succeeding manufacturer to enter into a same line make franchise with any person or to relocate any existing same line make franchise, for a line make of the bankrupted manufacturer that would be located or relocated within the relevant market area of a former franchisee without first offering the former franchisee the additional or relocated franchise, unless (i) as a result of a former franchisee's cancellation, termination, noncontinuance, or nonrenewal of the franchise, the bankrupted manufacturer had consolidated the line make with another of its line makes with a franchisee who operates a facility located within that relevant market area; (ii) the successor manufacturer paid the former franchisee the fair market value of the former franchisee's franchise; or (iii) the successor manufacturer proves that the former franchisee is unfit to own or manage the dealership. Prohibits a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent or other representative thereof from directly or indirectly conditioning the awarding of a franchise to a prospective new motor vehicle dealer, the addition of a line make or franchise to an existing dealer, the renewal of a franchise of an existing dealer, the approval of the relocation of an existing dealer's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a dealer, proposed new dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. Defines terms. Effective immediately.

LRB096 14542 KTG 29374 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,

1 or attempt to coerce, any motor vehicle dealer:

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

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

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

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

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

1 same to be arbitrary or capricious;

2 (2) to fail or refuse to advise or disclose to any
3 motor vehicle dealer having a franchise or selling
4 agreement, upon written request therefor, the basis upon
5 which new motor vehicles of the same line make are
6 allocated or distributed to motor vehicle dealers in the
7 State and the basis upon which the current allocation or
8 distribution is being made or will be made to such motor
9 vehicle dealer;

10 (3) to refuse to deliver in reasonable quantities and
11 within a reasonable time after receipt of dealer's order,
12 to any motor vehicle dealer having a franchise or selling
13 agreement for the retail sale of new motor vehicles sold or
14 distributed by such manufacturer, distributor, wholesaler,
15 distributor branch or division, factory branch or division
16 or wholesale branch or division, any such motor vehicles as
17 are covered by such franchise or selling agreement
18 specifically publicly advertised in the State by such
19 manufacturer, distributor, wholesaler, distributor branch
20 or division, factory branch or division, or wholesale
21 branch or division to be available for immediate delivery.
22 However, the failure to deliver any motor vehicle shall not
23 be considered a violation of this Act if such failure is
24 due to an act of God, a work stoppage or delay due to a
25 strike or labor difficulty, a shortage of materials, a lack
26 of manufacturing capacity, a freight embargo or other cause

1 over which the manufacturer, distributor, or wholesaler,
2 or any agent thereof has no control;

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

19 (5) to require a franchisee to participate in an
20 advertising campaign or contest or any promotional
21 campaign, or to purchase or lease any promotional
22 materials, training materials, show room or other display
23 decorations or materials at the expense of the franchisee;

24 (6) to cancel or terminate the franchise or selling
25 agreement of a motor vehicle dealer without good cause and
26 without giving notice as hereinafter provided; to fail or

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

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

23 (i) the business operations of the franchisee
24 have been abandoned or the franchisee has failed to
25 conduct customary sales and service operations
26 during customary business hours for at least 7

1 consecutive business days unless such closing is
2 due to an act of God, strike or labor difficulty or
3 other cause over which the franchisee has no
4 control; or

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

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

17 (B) If a manufacturer, distributor, wholesaler,
18 distributor branch or division, factory branch or
19 division or wholesale branch or division intends to
20 change substantially or modify the sales and service
21 obligations or capital requirements of a motor vehicle
22 dealer as a condition to extending or renewing the
23 existing franchise or selling agreement of such motor
24 vehicle dealer, it shall send a letter by certified
25 mail, return receipt requested, to the affected
26 franchisee at least 60 days before the date of

1 expiration of the franchise or selling agreement. Each
2 notice of proposed action shall include a detailed
3 statement setting forth the specific grounds for the
4 proposed action and shall state that the dealer has
5 only 30 days from receipt of the notice to file with
6 the Motor Vehicle Review Board a written protest
7 against the proposed action.

8 (C) Within 30 days from receipt of the notice under
9 subparagraphs (A) and (B), the franchisee may file with
10 the Board a written protest against the proposed
11 action.

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

20 The manufacturer shall have the burden of proof to
21 establish that good cause exists to cancel or
22 terminate, or fail to extend or renew the franchise or
23 selling agreement of a motor vehicle dealer or
24 franchisee, and to change substantially or modify the
25 sales and service obligations or capital requirements
26 of a motor vehicle dealer as a condition to extending

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

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

20 (E) The manufacturer may not cancel or terminate,
21 or fail to extend or renew a franchise or selling
22 agreement or change or modify the obligations of the
23 franchisee as a condition to offering a renewal,
24 replacement, or succeeding franchise or selling
25 agreement before the hearing process is concluded as
26 prescribed by this Act, and thereafter, if the Board

1 determines that the manufacturer has failed to meet its
2 burden of proof and that good cause does not exist to
3 allow the proposed action;

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

23 (8) to require or otherwise coerce a motor vehicle
24 dealer to underutilize the motor vehicle dealer's
25 facilities by requiring or otherwise coercing the motor
26 vehicle dealer to exclude or remove from the motor vehicle

1 dealer's facilities operations for selling or servicing of
2 any vehicles for which the motor vehicle dealer has a
3 franchise agreement with another manufacturer,
4 distributor, wholesaler, distribution branch or division,
5 or officer, agent, or other representative thereof;
6 provided, however, that, in light of all existing
7 circumstances, (i) the motor vehicle dealer maintains a
8 reasonable line of credit for each make or line of new
9 motor vehicle, (ii) the new motor vehicle dealer remains in
10 compliance with any reasonable facilities requirements of
11 the manufacturer, (iii) no change is made in the principal
12 management of the new motor vehicle dealer, and (iv) the
13 addition of the make or line of new motor vehicles would be
14 reasonable. The reasonable facilities requirement set
15 forth in item (ii) of subsection (d)(8) shall not include
16 any requirement that a franchisee establish or maintain
17 exclusive facilities, personnel, or display space. Any
18 decision by a motor vehicle dealer to sell additional makes
19 or lines at the motor vehicle dealer's facility shall be
20 presumed to be reasonable, and the manufacturer shall have
21 the burden to overcome that presumption. A motor vehicle
22 dealer must provide a written notification of its intent to
23 add a make or line of new motor vehicles to the
24 manufacturer. If the manufacturer does not respond to the
25 motor vehicle dealer, in writing, objecting to the addition
26 of the make or line within 60 days after the date that the

1 motor vehicle dealer sends the written notification, then
2 the manufacturer shall be deemed to have approved the
3 addition of the make or line; or

4 (9) to use or consider the performance of a motor
5 vehicle dealer relating to the sale of the manufacturer's,
6 distributor's, or wholesaler's vehicles or the motor
7 vehicle dealer's ability to satisfy any minimum sales or
8 market share quota or responsibility relating to the sale
9 of the manufacturer's, distributor's, or wholesaler's new
10 vehicles in determining:

11 (A) the motor vehicle dealer's eligibility to
12 purchase program, certified, or other used motor
13 vehicles from the manufacturer, distributor, or
14 wholesaler;

15 (B) the volume, type, or model of program,
16 certified, or other used motor vehicles that a motor
17 vehicle dealer is eligible to purchase from the
18 manufacturer, distributor, or wholesaler;

19 (C) the price of any program, certified, or other
20 used motor vehicle that the dealer is eligible to
21 purchase from the manufacturer, distributor, or
22 wholesaler; or

23 (D) the availability or amount of any discount,
24 credit, rebate, or sales incentive that the dealer is
25 eligible to receive from the manufacturer,
26 distributor, or wholesaler for the purchase of any

1 program, certified, or other used motor vehicle
2 offered for sale by the manufacturer, distributor, or
3 wholesaler.

4 (e) It shall be deemed a violation for a manufacturer, a
5 distributor, a wholesaler, a distributor branch or division or
6 officer, agent or other representative thereof:

7 (1) to resort to or use any false or misleading
8 advertisement in connection with his business as such
9 manufacturer, distributor, wholesaler, distributor branch
10 or division or officer, agent or other representative
11 thereof;

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

26 (3) to offer to sell or lease, or to sell or lease, any

1 new motor vehicle to any person, except a wholesaler,
2 distributor or manufacturer's employees at a lower actual
3 price therefor than the actual price offered and charged to
4 a motor vehicle dealer for the same model vehicle similarly
5 equipped or to utilize any device which results in such
6 lesser actual price. However, the provisions of this
7 paragraph shall not apply to sales to a motor vehicle
8 dealer for resale to any unit of the United States
9 Government, the State or any of its political subdivisions;

10 (4) to prevent or attempt to prevent by contract or
11 otherwise any motor vehicle dealer or franchisee from
12 changing the executive management control of the motor
13 vehicle dealer or franchisee unless the franchiser, having
14 the burden of proof, proves that such change of executive
15 management will result in executive management control by a
16 person or persons who are not of good moral character or
17 who do not meet the franchiser's existing and, with
18 consideration given to the volume of sales and service of
19 the dealership, uniformly applied minimum business
20 experience standards in the market area. However where the
21 manufacturer rejects a proposed change in executive
22 management control, the manufacturer shall give written
23 notice of his reasons to the dealer within 60 days of
24 notice to the manufacturer by the dealer of the proposed
25 change. If the manufacturer does not send a letter to the
26 franchisee by certified mail, return receipt requested,

1 within 60 days from receipt by the manufacturer of the
2 proposed change, then the change of the executive
3 management control of the franchisee shall be deemed
4 accepted as proposed by the franchisee, and the
5 manufacturer shall give immediate effect to such change;

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

16 (6) to refuse to give effect to or prevent or attempt
17 to prevent by contract or otherwise any motor vehicle
18 dealer or any officer, partner or stockholder of any motor
19 vehicle dealer from selling or transferring any part of the
20 interest of any of them to any other person or persons or
21 party or parties unless such sale or transfer is to a
22 transferee who would not otherwise qualify for a new motor
23 vehicle dealers license under "The Illinois Vehicle Code"
24 or unless the franchiser, having the burden of proof,
25 proves that such sale or transfer is to a person or party
26 who is not of good moral character or does not meet the

1 franchiser's existing and reasonable capital standards
2 and, with consideration given to the volume of sales and
3 service of the dealership, uniformly applied minimum
4 business experience standards in the market area. However,
5 nothing herein shall be construed to prevent a franchiser
6 from implementing affirmative action programs providing
7 business opportunities for minorities or from complying
8 with applicable federal, State or local law:

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

10 The manufacturer shall have the burden of proof to
11 establish that good cause exists to refuse to approve
12 the sale or transfer to the transferee. The
13 determination whether good cause exists to refuse to
14 approve the sale or transfer shall be made by the Board
15 under subdivisions (6)(B). The manufacturer shall not
16 refuse to approve the sale or transfer by a dealer or
17 an officer, partner, or stockholder of a franchise or
18 any part of the interest to any person or persons
19 before the hearing process is concluded as prescribed
20 by this Act, and thereafter if the Board determines
21 that the manufacturer has failed to meet its burden of
22 proof and that good cause does not exist to refuse to
23 approve the sale or transfer to the transferee.

24 (B) Good cause to refuse to approve such sale or
25 transfer under this Section is established when such
26 sale or transfer is to a transferee who would not

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

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

16 (8) to grant an additional franchise in the relevant
17 market area of an existing franchise of the same line make
18 or to relocate an existing motor vehicle dealership within
19 or into a relevant market area of an existing franchise of
20 the same line make. However, if the manufacturer wishes to
21 grant such an additional franchise to an independent person
22 in a bona fide relationship in which such person is
23 prepared to make a significant investment subject to loss
24 in such a dealership, or if the manufacturer wishes to
25 relocate an existing motor vehicle dealership, then the
26 manufacturer shall send a letter by certified mail, return

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

21 When a protest has been timely filed, the Board shall
22 enter an order fixing a date (within 60 days of the date of
23 the order), time, and place of a hearing on the protest,
24 required under Sections 12 and 29 of this Act, and send by
25 certified or registered mail, return receipt requested, a
26 copy of the order to the manufacturer that filed the notice

1 of intention to grant or establish the proposed additional
2 or relocated franchise and to the protesting dealer or
3 dealers of the same line make whose relevant market area
4 includes the proposed location of the additional or
5 relocated franchise.

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

20 The determination whether good cause exists for
21 allowing the grant or establishment of an additional
22 franchise or relocated existing franchise, shall be made by
23 the Board under subsection (c) of Section 12 of this Act.
24 If the manufacturer seeks to enter into a contract,
25 agreement or other arrangement with any person,
26 establishing any additional motor vehicle dealership or

1 other facility, limited to the sale of factory repurchase
2 vehicles or late model vehicles, then the manufacturer
3 shall follow the notice procedures set forth in this
4 Section and the determination whether good cause exists for
5 allowing the proposed agreement shall be made by the Board
6 under subsection (c) of Section 12, with the manufacturer
7 having the burden of proof.

8 A. (Blank).

9 B. For the purposes of this Section, appointment of
10 a successor motor vehicle dealer at the same location
11 as its predecessor, or within 2 miles of such location,
12 or the relocation of an existing dealer or franchise
13 within 2 miles of the relocating dealer's or
14 franchisee's existing location, shall not be construed
15 as a grant, establishment or the entering into of an
16 additional franchise or selling agreement, or a
17 relocation of an existing franchise. The reopening of a
18 motor vehicle dealership that has not been in operation
19 for 18 months or more shall be deemed the grant of an
20 additional franchise or selling agreement.

21 C. This Section does not apply to the relocation of
22 an existing dealership or franchise in a county having
23 a population of more than 300,000 persons when the new
24 location is within the dealer's current relevant
25 market area, provided the new location is more than 7
26 miles from the nearest dealer of the same line make.

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

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

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

21 (10) to prevent or refuse to give effect to the
22 succession to the ownership or management control of a
23 dealership by any legatee under the will of a dealer or to
24 an heir under the laws of descent and distribution of this
25 State unless the franchisee has designated a successor to
26 the ownership or management control under the succession

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

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

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

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

24 (A) If the franchiser intends to refuse to honor
25 the successor to the ownership of a deceased or
26 incapacitated dealer or franchisee under an existing

1 franchise agreement, the franchiser shall send a
2 letter by certified mail, return receipt requested, to
3 the designated successor within 60 days from receipt of
4 a proposal advising of its intent to refuse to honor
5 the succession and to discontinue the existing
6 franchise agreement and shall state that the
7 designated successor only has 30 days from the receipt
8 of the notice to file with the Motor Vehicle Review
9 Board a written protest against the proposed action.
10 The notice shall set forth the specific grounds for the
11 refusal to honor the succession and discontinue the
12 existing franchise agreement.

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

18 Within 30 days from the date the notice was
19 received by the designated successor or any other
20 person entitled to notice, the designee or other person
21 may file with the Board a written protest against the
22 proposed action.

23 When a protest has been timely filed, the Board
24 shall enter an order, fixing a date (within 60 days of
25 the date of the order), time, and place of a hearing on
26 the protest, required under Sections 12 and 29 of this

1 Act, and send by certified mail, return receipt
2 requested, a copy of the order to the franchiser that
3 filed the notice of intention of the proposed action
4 and to the protesting designee or such other person.

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

18 (B) No manufacturer shall impose any conditions
19 upon honoring the succession and continuing the
20 existing franchise agreement with the designated
21 successor other than that the franchisee has
22 designated a successor to the ownership or management
23 control under the succession provisions of the
24 franchise, or that the designated successor is of good
25 moral character or meets the reasonable capital
26 standards and, with consideration given to the volume

1 of sales and service of the dealership, uniformly
2 applied minimum business experience standards in the
3 market area;

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

24 (12) to prevent or refuse to grant a franchise to a
25 person because such person owns, has investment in or
26 participates in the management of or holds a franchise for

1 the sale of another make or line of motor vehicles within 7
2 miles of the proposed franchise location in a county having
3 a population of more than 300,000 persons, or within 12
4 miles of the proposed franchise location in a county having
5 a population of less than 300,000 persons; or

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

15 (f) It is deemed a violation for a manufacturer, a
16 distributor, a wholesale, a distributor branch or division, a
17 factory branch or division, or a wholesale branch or division,
18 or officer, agent, broker, shareholder, except a shareholder of
19 1% or less of the outstanding shares of any class of securities
20 of a manufacturer, distributor, or wholesaler which is a
21 publicly traded corporation, or other representative, directly
22 or indirectly, to own or operate a place of business as a motor
23 vehicle franchisee or motor vehicle financing affiliate,
24 except that, this subsection shall not prohibit the ownership
25 or operation of a place of business by a manufacturer,
26 distributor, or wholesaler for a period, not to exceed 18

1 months, during the transition from one motor vehicle franchisee
2 to another; or the investment in a motor vehicle franchisee by
3 a manufacturer, distributor, or wholesaler if the investment is
4 for the sole purpose of enabling a partner or shareholder in
5 that motor vehicle franchisee to acquire an interest in that
6 motor vehicle franchisee and that partner or shareholder is not
7 otherwise employed by or associated with the manufacturer,
8 distributor, or wholesaler and would not otherwise have the
9 requisite capital investment funds to invest in the motor
10 vehicle franchisee, and has the right to purchase the entire
11 equity interest of the manufacturer, distributor, or
12 wholesaler in the motor vehicle franchisee within a reasonable
13 period of time not to exceed 5 years.

14 (g) Notwithstanding the terms, provisions, or conditions
15 of any agreement or waiver, it shall be deemed a violation for
16 a manufacturer, a distributor, a wholesaler, a distributor
17 branch or division, a factory branch or division, or a
18 wholesale branch or division, or officer, agent or other
19 representative thereof, to directly or indirectly condition
20 the awarding of a franchise to a prospective new motor vehicle
21 dealer, the addition of a line make or franchise to an existing
22 dealer, the renewal of a franchise of an existing dealer, the
23 approval of the relocation of an existing dealer's facility, or
24 the approval of the sale or transfer of the ownership of a
25 franchise on the willingness of a dealer, proposed new dealer,
26 or owner of an interest in the dealership facility to enter

1 into a site control agreement or exclusive use agreement.

2 For purposes of this subsection (g), the terms "site
3 control agreement" and "exclusive use agreement" include any
4 agreement that has the effect of either (i) requiring that the
5 dealer establish or maintain exclusive dealership facilities;
6 or (ii) restricting the ability of the dealer, or the ability
7 of the dealer's lessor in the event the dealership facility is
8 being leased, to transfer, sell, lease, or change the use of
9 the dealership premises, whether by sublease, lease,
10 collateral pledge of lease, right of first refusal to purchase
11 or lease, option to purchase, option to lease, or other similar
12 agreement, regardless of the parties to such agreement.

13 Any provision contained in any agreement entered into on or
14 after the effective date of this amendatory Act of the 96th
15 General Assembly that is inconsistent with the provisions of
16 this subsection (g) shall be voidable at the election of the
17 affected dealer, prospective dealer, or owner of an interest in
18 the dealership facility.

19 (h) For purposes of this subsection:

20 "Successor manufacturer" means any motor vehicle
21 manufacturer that, on or after the effective date of this
22 amendatory Act of the 96th General Assembly, acquires, succeeds
23 to, or assumes any part of the business of another
24 manufacturer, referred to as the "predecessor manufacturer",
25 as the result of any of the following:

26 (i) A change in ownership, operation, or control of the

1 predecessor manufacturer by sale or transfer of assets,
2 corporate stock or other equity interest, assignment,
3 merger, consolidation, combination, joint venture,
4 redemption, court-approved sale, operation of law or
5 otherwise.

6 (ii) The termination, suspension, or cessation of a
7 part or all of the business operations of the predecessor
8 manufacturer.

9 (iii) The discontinuance of the sale of the product
10 line.

11 (iv) A change in distribution system by the predecessor
12 manufacturer, whether through a change in distributor or
13 the predecessor manufacturer's decision to cease
14 conducting business through a distributor altogether.

15 "Relevant market area" means the area within a 10 mile, 15
16 mile, or 20 mile radius around the site of the previous
17 franchisee's dealership facility, as determined in the same
18 manner that the relevant market area is determined under
19 Section 2(q) of this Act when a manufacturer is seeking to
20 establish an additional new motor vehicle dealer.

21 "Former Franchisee" means a new motor vehicle dealer that
22 has entered into a franchise with a predecessor manufacturer
23 and that has either:

24 (i) entered into a termination agreement or deferred
25 termination agreement with a predecessor or successor
26 manufacturer related to such franchise; or

1 (ii) has had such franchise canceled, terminated,
2 nonrenewed, noncontinued, rejected, nonassumed, or
3 otherwise ended.

4 For a period of 4 years from the date that a successor
5 manufacturer acquires, succeeds to, or assumes any part of the
6 business of a predecessor manufacturer, it shall be unlawful
7 for such successor manufacturer to enter into a same line make
8 franchise with any person or to permit the relocation of any
9 existing same line make franchise, for a line make of the
10 predecessor manufacturer that would be located or relocated
11 within the relevant market area of a former franchisee who
12 owned or leased a dealership facility in that relevant market
13 area without first offering the additional or relocated
14 franchise to the former franchisee, or the designated successor
15 of such former franchisee in the event the former franchisee is
16 deceased or disabled, at no cost and without any requirements
17 or restrictions other than those imposed generally on the
18 manufacturer's other franchisees at that time, unless one of
19 the following applies:

20 (1) As a result of the former franchisee's
21 cancellation, termination, noncontinuance, or nonrenewal
22 of the franchise, the predecessor manufacturer had
23 consolidated the line make with another of its line makes
24 for which the predecessor manufacturer had a franchisee
25 with a then-existing dealership facility located within
26 that relevant market area.

1 (2) The successor manufacturer has paid the former
2 franchisee, or the designated successor of such former
3 franchisee in the event the former franchisee is deceased
4 or disabled, the fair market value of the former
5 franchisee's franchise on (i) the date the franchisor
6 announces the action which results in the termination,
7 cancellation, or nonrenewal; or (ii) the date the action
8 which results in termination, cancellation, or nonrenewal
9 first became general knowledge; or (iii) the day 12 months
10 prior to the date on which the notice of termination,
11 cancellation, or nonrenewal is issued, whichever amount is
12 higher. Payment is due within 90 days of the effective date
13 of the termination, cancellation, or nonrenewal. If the
14 termination, cancellation, or nonrenewal is due to a
15 manufacturer's change in distributors, the manufacturer
16 may avoid paying fair market value to the dealer if the new
17 distributor or the manufacturer offers the dealer a
18 franchise agreement with terms acceptable to the dealer.

19 (3) The successor manufacturer proves that the former
20 franchisee, or the designated successor of such former
21 franchisee in the event the former franchisee is deceased
22 or disabled, by reason of lack of training, lack of prior
23 experience, poor past performance, lack of financial
24 ability, or poor character, is unfit to own or manage the
25 dealership. A successor manufacturer who seeks to assert
26 that a former franchisee is unfit to own or manage the

1 dealership must file a petition seeking a hearing on this
2 issue before the Secretary of State and shall have the
3 burden of proving lack of fitness at such hearing. The
4 Secretary of State shall try to conduct the hearing and
5 render a final determination within 120 days after the
6 manufacturer's petition has been filed. No successor
7 dealer, other than the former franchisee, may be appointed
8 or franchised by the successor manufacturer within the
9 relevant market area until the Secretary of State has held
10 a hearing and rendered a determination on the issue of the
11 fitness of the previous franchisee to own or manage the
12 dealership.

13 (Source: P.A. 96-11, eff. 5-22-09.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.