

# HB3086



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB3086**

Introduced 2/23/2011, by Rep. Dave Winters

#### SYNOPSIS AS INTRODUCED:

625 ILCS 5/5-101

from Ch. 95 1/2, par. 5-101

Amends the Illinois Vehicle Code. Makes a technical change in a Section concerning new vehicle dealers.

LRB097 08216 HEP 48341 b

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 5-101 as follows:

6 (625 ILCS 5/5-101) (from Ch. 95 1/2, par. 5-101)

7 Sec. 5-101. New vehicle dealers must be licensed.

8 (a) No person shall engage in this State in the ~~the~~  
9 business of selling or dealing in, on consignment or otherwise,  
10 new vehicles of any make, or act as an intermediary or agent or  
11 broker for any licensed dealer or vehicle purchaser other than  
12 as a salesperson, or represent or advertise that he is so  
13 engaged or intends to so engage in such business unless  
14 licensed to do so in writing by the Secretary of State under  
15 the provisions of this Section.

16 (b) An application for a new vehicle dealer's license shall  
17 be filed with the Secretary of State, duly verified by oath, on  
18 such form as the Secretary of State may by rule or regulation  
19 prescribe and shall contain:

20 1. The name and type of business organization of the  
21 applicant and his established and additional places of  
22 business, if any, in this State.

23 2. If the applicant is a corporation, a list of its

1 officers, directors, and shareholders having a ten percent  
2 or greater ownership interest in the corporation, setting  
3 forth the residence address of each; if the applicant is a  
4 sole proprietorship, a partnership, an unincorporated  
5 association, a trust, or any similar form of business  
6 organization, the name and residence address of the  
7 proprietor or of each partner, member, officer, director,  
8 trustee, or manager.

9 3. The make or makes of new vehicles which the  
10 applicant will offer for sale at retail in this State.

11 4. The name of each manufacturer or franchised  
12 distributor, if any, of new vehicles with whom the  
13 applicant has contracted for the sale of such new vehicles.  
14 As evidence of this fact, the application shall be  
15 accompanied by a signed statement from each such  
16 manufacturer or franchised distributor. If the applicant  
17 is in the business of offering for sale new conversion  
18 vehicles, trucks or vans, except for trucks modified to  
19 serve a special purpose which includes but is not limited  
20 to the following vehicles: street sweepers, fertilizer  
21 spreaders, emergency vehicles, implements of husbandry or  
22 maintenance type vehicles, he must furnish evidence of a  
23 sales and service agreement from both the chassis  
24 manufacturer and second stage manufacturer.

25 5. A statement that the applicant has been approved for  
26 registration under the Retailers' Occupation Tax Act by the

1 Department of Revenue: Provided that this requirement does  
2 not apply to a dealer who is already licensed hereunder  
3 with the Secretary of State, and who is merely applying for  
4 a renewal of his license. As evidence of this fact, the  
5 application shall be accompanied by a certification from  
6 the Department of Revenue showing that that Department has  
7 approved the applicant for registration under the  
8 Retailers' Occupation Tax Act.

9 6. A statement that the applicant has complied with the  
10 appropriate liability insurance requirement. A Certificate  
11 of Insurance in a solvent company authorized to do business  
12 in the State of Illinois shall be included with each  
13 application covering each location at which he proposes to  
14 act as a new vehicle dealer. The policy must provide  
15 liability coverage in the minimum amounts of \$100,000 for  
16 bodily injury to, or death of, any person, \$300,000 for  
17 bodily injury to, or death of, two or more persons in any  
18 one accident, and \$50,000 for damage to property. Such  
19 policy shall expire not sooner than December 31 of the year  
20 for which the license was issued or renewed. The expiration  
21 of the insurance policy shall not terminate the liability  
22 under the policy arising during the period for which the  
23 policy was filed. Trailer and mobile home dealers are  
24 exempt from this requirement.

25 If the permitted user has a liability insurance policy  
26 that provides automobile liability insurance coverage of

1 at least \$100,000 for bodily injury to or the death of any  
2 person, \$300,000 for bodily injury to or the death of any 2  
3 or more persons in any one accident, and \$50,000 for damage  
4 to property, then the permitted user's insurer shall be the  
5 primary insurer and the dealer's insurer shall be the  
6 secondary insurer. If the permitted user does not have a  
7 liability insurance policy that provides automobile  
8 liability insurance coverage of at least \$100,000 for  
9 bodily injury to or the death of any person, \$300,000 for  
10 bodily injury to or the death of any 2 or more persons in  
11 any one accident, and \$50,000 for damage to property, or  
12 does not have any insurance at all, then the dealer's  
13 insurer shall be the primary insurer and the permitted  
14 user's insurer shall be the secondary insurer.

15 When a permitted user is "test driving" a new vehicle  
16 dealer's automobile, the new vehicle dealer's insurance  
17 shall be primary and the permitted user's insurance shall  
18 be secondary.

19 As used in this paragraph 6, a "permitted user" is a  
20 person who, with the permission of the new vehicle dealer  
21 or an employee of the new vehicle dealer, drives a vehicle  
22 owned and held for sale or lease by the new vehicle dealer  
23 which the person is considering to purchase or lease, in  
24 order to evaluate the performance, reliability, or  
25 condition of the vehicle. The term "permitted user" also  
26 includes a person who, with the permission of the new

1 vehicle dealer, drives a vehicle owned or held for sale or  
2 lease by the new vehicle dealer for loaner purposes while  
3 the user's vehicle is being repaired or evaluated.

4 As used in this paragraph 6, "test driving" occurs when  
5 a permitted user who, with the permission of the new  
6 vehicle dealer or an employee of the new vehicle dealer,  
7 drives a vehicle owned and held for sale or lease by a new  
8 vehicle dealer that the person is considering to purchase  
9 or lease, in order to evaluate the performance,  
10 reliability, or condition of the vehicle.

11 As used in this paragraph 6, "loaner purposes" means  
12 when a person who, with the permission of the new vehicle  
13 dealer, drives a vehicle owned or held for sale or lease by  
14 the new vehicle dealer while the user's vehicle is being  
15 repaired or evaluated.

16 7. (A) An application for a new motor vehicle dealer's  
17 license shall be accompanied by the following license fees:

18 \$1,000 for applicant's established place of  
19 business, and \$100 for each additional place of  
20 business, if any, to which the application pertains;  
21 but if the application is made after June 15 of any  
22 year, the license fee shall be \$500 for applicant's  
23 established place of business plus \$50 for each  
24 additional place of business, if any, to which the  
25 application pertains. License fees shall be returnable  
26 only in the event that the application is denied by the

1 Secretary of State. All moneys received by the  
2 Secretary of State as license fees under paragraph  
3 (7) (A) of subsection (b) of this Section prior to  
4 applications for the 2004 licensing year shall be  
5 deposited into the Motor Vehicle Review Board Fund and  
6 shall be used to administer the Motor Vehicle Review  
7 Board under the Motor Vehicle Franchise Act. Of the  
8 money received by the Secretary of State as license  
9 fees under paragraph (7) (A) of subsection (b) of this  
10 Section for the 2004 licensing year and thereafter, 10%  
11 shall be deposited into the Motor Vehicle Review Board  
12 Fund and shall be used to administer the Motor Vehicle  
13 Review Board under the Motor Vehicle Franchise Act and  
14 90% shall be deposited into the General Revenue Fund.

15 (B) An application for a new vehicle dealer's  
16 license, other than for a new motor vehicle dealer's  
17 license, shall be accompanied by the following license  
18 fees:

19 \$1,000 for applicant's established place of  
20 business, and \$50 for each additional place of  
21 business, if any, to which the application pertains;  
22 but if the application is made after June 15 of any  
23 year, the license fee shall be \$500 for applicant's  
24 established place of business plus \$25 for each  
25 additional place of business, if any, to which the  
26 application pertains. License fees shall be returnable

1           only in the event that the application is denied by the  
2           Secretary of State. Of the money received by the  
3           Secretary of State as license fees under this  
4           subsection for the 2004 licensing year and thereafter,  
5           95% shall be deposited into the General Revenue Fund.

6           8. A statement that the applicant's officers,  
7           directors, shareholders having a 10% or greater ownership  
8           interest therein, proprietor, a partner, member, officer,  
9           director, trustee, manager or other principals in the  
10          business have not committed in the past 3 years any one  
11          violation as determined in any civil, criminal or  
12          administrative proceedings of any one of the following  
13          Acts:

14                 (A) The Anti Theft Laws of the Illinois Vehicle  
15                 Code;

16                 (B) The Certificate of Title Laws of the Illinois  
17                 Vehicle Code;

18                 (C) The Offenses against Registration and  
19                 Certificates of Title Laws of the Illinois Vehicle  
20                 Code;

21                 (D) The Dealers, Transporters, Wreckers and  
22                 Rebuilders Laws of the Illinois Vehicle Code;

23                 (E) Section 21-2 of the Criminal Code of 1961,  
24                 Criminal Trespass to Vehicles; or

25                 (F) The Retailers' Occupation Tax Act.

26          9. A statement that the applicant's officers,



1 directors, shareholders having a 10% or greater ownership  
2 interest therein, proprietor, partner, member, officer,  
3 director, trustee, manager or other principals in the  
4 business have not committed in any calendar year 3 or more  
5 violations, as determined in any civil, criminal or  
6 administrative proceedings, of any one or more of the  
7 following Acts:

8 (A) The Consumer Finance Act;

9 (B) The Consumer Installment Loan Act;

10 (C) The Retail Installment Sales Act;

11 (D) The Motor Vehicle Retail Installment Sales  
12 Act;

13 (E) The Interest Act;

14 (F) The Illinois Wage Assignment Act;

15 (G) Part 8 of Article XII of the Code of Civil  
16 Procedure; or

17 (H) The Consumer Fraud Act.

18 10. A bond or certificate of deposit in the amount of  
19 \$20,000 for each location at which the applicant intends to  
20 act as a new vehicle dealer. The bond shall be for the term  
21 of the license, or its renewal, for which application is  
22 made, and shall expire not sooner than December 31 of the  
23 year for which the license was issued or renewed. The bond  
24 shall run to the People of the State of Illinois, with  
25 surety by a bonding or insurance company authorized to do  
26 business in this State. It shall be conditioned upon the

1 proper transmittal of all title and registration fees and  
2 taxes (excluding taxes under the Retailers' Occupation Tax  
3 Act) accepted by the applicant as a new vehicle dealer.

4 11. Such other information concerning the business of  
5 the applicant as the Secretary of State may by rule or  
6 regulation prescribe.

7 12. A statement that the applicant understands Chapter  
8 One through Chapter Five of this Code.

9 (c) Any change which renders no longer accurate any  
10 information contained in any application for a new vehicle  
11 dealer's license shall be amended within 30 days after the  
12 occurrence of such change on such form as the Secretary of  
13 State may prescribe by rule or regulation, accompanied by an  
14 amendatory fee of \$2.

15 (d) Anything in this Chapter 5 to the contrary  
16 notwithstanding no person shall be licensed as a new vehicle  
17 dealer unless:

18 1. He is authorized by contract in writing between  
19 himself and the manufacturer or franchised distributor of  
20 such make of vehicle to so sell the same in this State, and

21 2. Such person shall maintain an established place of  
22 business as defined in this Act.

23 (e) The Secretary of State shall, within a reasonable time  
24 after receipt, examine an application submitted to him under  
25 this Section and unless he makes a determination that the  
26 application submitted to him does not conform with the

1 requirements of this Section or that grounds exist for a denial  
2 of the application, under Section 5-501 of this Chapter, grant  
3 the applicant an original new vehicle dealer's license in  
4 writing for his established place of business and a  
5 supplemental license in writing for each additional place of  
6 business in such form as he may prescribe by rule or regulation  
7 which shall include the following:

8 1. The name of the person licensed;

9 2. If a corporation, the name and address of its  
10 officers or if a sole proprietorship, a partnership, an  
11 unincorporated association or any similar form of business  
12 organization, the name and address of the proprietor or of  
13 each partner, member, officer, director, trustee or  
14 manager;

15 3. In the case of an original license, the established  
16 place of business of the licensee;

17 4. In the case of a supplemental license, the  
18 established place of business of the licensee and the  
19 additional place of business to which such supplemental  
20 license pertains;

21 5. The make or makes of new vehicles which the licensee  
22 is licensed to sell.

23 (f) The appropriate instrument evidencing the license or a  
24 certified copy thereof, provided by the Secretary of State,  
25 shall be kept posted conspicuously in the established place of  
26 business of the licensee and in each additional place of

1 business, if any, maintained by such licensee.

2 (g) Except as provided in subsection (h) hereof, all new  
3 vehicle dealer's licenses granted under this Section shall  
4 expire by operation of law on December 31 of the calendar year  
5 for which they are granted unless sooner revoked or cancelled  
6 under the provisions of Section 5-501 of this Chapter.

7 (h) A new vehicle dealer's license may be renewed upon  
8 application and payment of the fee required herein, and  
9 submission of proof of coverage under an approved bond under  
10 the "Retailers' Occupation Tax Act" or proof that applicant is  
11 not subject to such bonding requirements, as in the case of an  
12 original license, but in case an application for the renewal of  
13 an effective license is made during the month of December, the  
14 effective license shall remain in force until the application  
15 is granted or denied by the Secretary of State.

16 (i) All persons licensed as a new vehicle dealer are  
17 required to furnish each purchaser of a motor vehicle:

18 1. In the case of a new vehicle a manufacturer's  
19 statement of origin and in the case of a used motor vehicle  
20 a certificate of title, in either case properly assigned to  
21 the purchaser;

22 2. A statement verified under oath that all identifying  
23 numbers on the vehicle agree with those on the certificate  
24 of title or manufacturer's statement of origin;

25 3. A bill of sale properly executed on behalf of such  
26 person;

1           4. A copy of the Uniform Invoice-transaction reporting  
2           return referred to in Section 5-402 hereof;

3           5. In the case of a rebuilt vehicle, a copy of the  
4           Disclosure of Rebuilt Vehicle Status; and

5           6. In the case of a vehicle for which the warranty has  
6           been reinstated, a copy of the warranty.

7           (j) Except at the time of sale or repossession of the  
8           vehicle, no person licensed as a new vehicle dealer may issue  
9           any other person a newly created key to a vehicle unless the  
10          new vehicle dealer makes a copy of the driver's license or  
11          State identification card of the person requesting or obtaining  
12          the newly created key. The new vehicle dealer must retain the  
13          copy for 30 days.

14          A new vehicle dealer who violates this subsection (j) is  
15          guilty of a petty offense. Violation of this subsection (j) is  
16          not cause to suspend, revoke, cancel, or deny renewal of the  
17          new vehicle dealer's license.

18          This amendatory Act of 1983 shall be applicable to the 1984  
19          registration year and thereafter.

20          (Source: P.A. 92-391, eff. 8-16-01; 92-835, eff. 6-1-03; 93-32,  
21          eff. 7-1-03.)