



Rep. Norine Hammond

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LRB097 17321 HEP 67475 a

1 AMENDMENT TO HOUSE BILL 4863

2 AMENDMENT NO. _____. Amend House Bill 4863 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Vehicle Code is amended by
5 changing Sections 5-102.7 and 6-303 as follows:

6 (625 ILCS 5/5-102.7)

7 Sec. 5-102.7. Dealer Recovery Trust Fund.

8 (a) The General Assembly finds that motor vehicle dealers
9 that go out of business without fulfilling agreements to pay
10 off the balance of their customers' liens on traded-in vehicles
11 cause financial harm to those customers by leaving those
12 customers liable for multiple vehicle loans and cause harm to
13 the integrity of the motor vehicle retailing industry. It is
14 the intent of the General Assembly to protect vehicle
15 purchasers by creating a Dealer Recovery Trust Fund to
16 reimburse these consumers.

1 (b) The Dealer Recovery Trust Fund shall be used solely for
2 the limited purpose of helping victims of dealership closings.
3 Any interest accrued by moneys in the Fund shall be deposited
4 and become part of the Dealer Recovery Trust Fund and its
5 purpose. The sole beneficiaries of the Dealer Recovery Trust
6 Fund are victims of dealership closings.

7 (c) Except where the context otherwise requires, the
8 following words and phrases, when used in this Section, have
9 the meanings ascribed to them in this subsection (c):

10 "Applicant" means a person who applies for reimbursement
11 from the Dealer Recovery Trust Fund Board.

12 "Board" means the Dealer Recovery Trust Fund Board created
13 under this Section.

14 "Dealer" means a new vehicle dealer licensed under Section
15 5-101 or a used vehicle dealer licensed under Section 5-102
16 that meets the definition of "used car dealer" contained in
17 Section 1-215 of this Code, excepting a dealer who primarily
18 sells mobile homes, recreational vehicles, or trailers or any
19 dealer who sells 25 vehicles or fewer per calendar year.

20 "Fund" means the Dealer Recovery Trust Fund created under
21 this Section.

22 "Fund Administrator" means the private entity, which shall
23 be appointed by the Board, that administers the Dealer Recovery
24 Trust Fund.

25 (d) Beginning October 1, 2011, each application or renewal
26 for a new vehicle dealer's license and each application or

1 renewal for a used vehicle dealer's license shall be
2 accompanied by the applicable Annual Dealer Recovery Fund Fee
3 under Section 5-101 or 5-102 of this Code. The fee shall be in
4 addition to any other fees imposed under this Article, shall be
5 submitted at the same time an application or renewal for a new
6 vehicle dealer's license or used vehicle dealer's license is
7 submitted, and shall be made payable to and remitted directly
8 to the Dealer Recovery Trust Fund, a trust fund outside of the
9 State Treasury which is hereby created. In addition, the Dealer
10 Recovery Trust Fund may accept any federal, State, or private
11 moneys for deposit into the Fund.

12 (e) The Fund Administrator shall maintain a list of all
13 dealers who have paid the fee under subsection (d) of this
14 Section for the current year, which shall be available to the
15 Secretary of State and the Board. The Secretary of State shall
16 revoke the dealer license of any dealer who does not pay the
17 fee imposed under subsection (d) of this Section. The Secretary
18 of State and the Fund Administrator may enter into information
19 sharing agreements as needed to implement this Section.

20 (f) The Fund shall be audited annually by an independent
21 auditor who is a certified public accountant and who has been
22 selected by the Board. The independent auditor shall compile an
23 annual report, which shall be filed with the Board and shall be
24 a public record. The auditor shall be paid by the Fund,
25 pursuant to an order of the Board.

26 (g) The Fund shall be maintained by the Fund Administrator,

1 who shall keep current records of the amounts deposited into
2 the Fund and the amounts paid out of the Fund pursuant to an
3 order of the Board. These records shall be made available to
4 all members of the Board upon reasonable request during normal
5 business hours. The Fund Administrator shall report the balance
6 in the Fund to the Board monthly, by the 15th day of each
7 month. For purposes of determining the amount available to pay
8 claims under this Section at any meeting of the Board, the
9 Board shall use the Fund Administrator's most recent monthly
10 report. The Fund Administrator shall purchase liability
11 insurance to cover management of the Fund at a cost not to
12 exceed 2% of the balance in the Fund as of January 15th of that
13 year.

14 (h) In any year for which the balance in the Fund as of
15 August 31st is greater than \$3,500,000, the Fund Administrator
16 shall notify the Secretary of State and the Secretary of State
17 shall suspend collection of the fee for the following year for
18 any dealer who has not had a claim paid from the Fund, has not
19 had his or her license suspended or revoked, and has not been
20 assessed any civil penalties under this Code during the 3
21 previous years.

22 (i) Moneys in the Dealer Recovery Trust Fund may be paid
23 from the Fund only as directed by a written order of the Board
24 and used only for the following purposes:

25 (i) to pay claims under a written order of the Board as
26 provided in this Section; or

1 (ii) to reimburse the Fund Administrator for its
2 expenses related to the administration of the Fund,
3 provided that the reimbursement to the Fund Administrator
4 in any year shall not exceed 2% of the balance in the Fund
5 as of January 15th of that year.

6 (j) The Dealer Recovery Trust Fund Board is hereby created.
7 The Board shall consist of the Secretary of State, or his or
8 her designee, who shall serve as chair, the Attorney General,
9 or his or her designee, who shall serve as secretary, and one
10 person alternatively representing new and independent Illinois
11 automobile dealers, selected collectively by the Attorney
12 General, or his or her designee, and the Secretary of State, or
13 his or her designee. The Secretary of State may propose
14 procedures and employ personnel as necessary to implement this
15 Section. The Board shall meet quarterly, and as needed, as
16 directed by the chair. The Board may not pay out any claims
17 before the balance deposited into the Fund exceeds \$500,000.
18 Board meetings shall be open to the public. The Board has the
19 authority to take any action by at least a two-thirds majority
20 vote.

21 (k) The following persons may apply to the Board for
22 reimbursement from the Dealer Recovery Trust Fund:

23 (i) A retail customer who, on or after October 1, 2011,
24 purchases a vehicle from a dealer who subsequently files
25 for bankruptcy or whose vehicle dealer's license is
26 subsequently revoked by the Secretary of State or otherwise

1 terminated and, as part of the purchase transaction, trades
2 in a vehicle with an outstanding lien to the dealer if lien
3 satisfaction was a condition of the purchase agreement and
4 the retail customer determines that the lien has not been
5 satisfied;

6 (ii) A retail customer who, on or after October 1,
7 2011, purchases a vehicle with an undisclosed lien from a
8 dealer who subsequently files for bankruptcy or whose
9 vehicle dealer's license is subsequently revoked by the
10 Secretary of State or otherwise terminated;

11 (iii) A dealer who, on or after October 1, 2011,
12 purchases a vehicle with an undisclosed lien from another
13 dealer who subsequently files for bankruptcy or whose
14 vehicle dealer's license is subsequently revoked by the
15 Secretary of State or otherwise terminated.

16 (l) To be considered by the Board, an applicant must submit
17 his or her claim to the Board within 9 months after the date of
18 the transaction that gave rise to the claim.

19 (m) At each meeting of the Board, it shall consider all
20 claims that are properly submitted to it on forms prescribed by
21 the Secretary of State at least 30 days before the date of the
22 Board's meeting. Before the Board may consider a claim against
23 a dealer, it must make a written determination that the dealer
24 has filed for bankruptcy under the provisions of 11 U.S.C.
25 Chapter 7; that the Secretary of State has revoked his or her
26 dealer's license; or that the license has been otherwise

1 terminated. Once the Board has made this determination, it may
2 consider the applicant's claim against the dealer. If a
3 two-thirds majority of the Board determines that the dealer has
4 committed a violation under subsection (k), it shall grant the
5 applicant's claim. Except as otherwise provided in this
6 Section, the maximum amount of any award for a claim under
7 paragraph (i) of subsection (k) of this Section shall be equal
8 to the amount of the unpaid balance of the lien that the dealer
9 agreed to pay off on behalf of the applicant as shown on the
10 bill of sale or the retail installment sales contract. The
11 maximum amount of any claim under paragraph (ii) or (iii) of
12 subsection (k) of this Section shall be equal to the amount of
13 the undisclosed lien. However, no award for a claim under
14 subsection (k) of this Section shall exceed \$35,000.

15 (n) If the balance in the Fund at the time of any Board
16 meeting is less than the amount of the total amount of all
17 claims awarded at that meeting, then all awards made at that
18 meeting shall be reduced, pro rata, so that the amount of
19 claims does not exceed the balance in the Fund. Before it
20 reviews new claims, the Board shall issue written orders to pay
21 the remaining portion of any claims that were so reduced,
22 provided that the balance in the Fund is sufficient to pay
23 those claims.

24 (o) Whenever the balance of the Fund falls below \$500,000,
25 the Board may charge dealers an additional assessment of up to
26 \$50 to bring the balance to at least \$500,000. Not more than

1 one additional assessment may be made against a dealer in any
2 12-month period.

3 (p) If the total amount of claims awarded against any
4 dealer exceeds 33% of the balance in the Fund, the Board may
5 permanently reduce the amount of those claims, pro rata, so
6 that those claims do not exceed 33% of the balance in the Fund.

7 (q) The Board shall issue a written order directing the
8 Fund Administrator to pay an applicant's claim to a secured
9 party where the Board has received a signed agreement between
10 the applicant and the secured party holding the lien. The
11 agreement must (i) state that the applicant and the secured
12 party agree to accept payment from the Fund to the secured
13 party as settlement in full of all claims against the dealer;
14 and (ii) release the lien and the title, if applicable, to the
15 vehicle that was the subject of the claim. The written order
16 shall state the amount of the claim and the name and address of
17 the secured party to whom the claim shall be paid. The Fund
18 Administrator shall pay the claim within 30 days after it
19 receives the Board's order.

20 (r) No dealer or principal associated with a dealer's
21 license is eligible for licensure, renewal or relicensure until
22 the full amount of reimbursement for an unpaid claim, plus
23 interest as determined by the Board, is paid to the Fund.
24 Nothing in this Section shall limit the authority of the
25 Secretary of State to suspend, revoke, or levy civil penalties
26 against a dealer, nor shall full repayment of the amount owed

1 to the Fund nullify or modify the effect of any action by the
2 Secretary.

3 (s) Nothing in this Section shall limit the right of any
4 person to seek relief through civil action against any other
5 person as an alternative to seeking reimbursement from the
6 Fund.

7 (t) This Section applies only to used car dealers as
8 defined in Section 1-215 of this Code.

9 (Source: P.A. 97-480, eff. 10-1-11.)

10 (625 ILCS 5/6-303) (from Ch. 95 1/2, par. 6-303)

11 Sec. 6-303. Driving while driver's license, permit or
12 privilege to operate a motor vehicle is suspended or revoked.

13 (a) Except as otherwise provided in subsection (a-5), any
14 person who drives or is in actual physical control of a motor
15 vehicle on any highway of this State at a time when such
16 person's driver's license, permit or privilege to do so or the
17 privilege to obtain a driver's license or permit is revoked or
18 suspended as provided by this Code or the law of another state,
19 except as may be specifically allowed by a judicial driving
20 permit issued prior to January 1, 2009, monitoring device
21 driving permit, family financial responsibility driving
22 permit, probationary license to drive, or a restricted driving
23 permit issued pursuant to this Code or under the law of another
24 state, shall be guilty of a Class A misdemeanor.

25 (a-5) Any person who violates this Section as provided in

1 subsection (a) while his or her driver's license, permit or
2 privilege is revoked because of a violation of Section 9-3 of
3 the Criminal Code of 1961, relating to the offense of reckless
4 homicide or a similar provision of a law of another state, is
5 guilty of a Class 4 felony. The person shall be required to
6 undergo a professional evaluation, as provided in Section
7 11-501 of this Code, to determine if an alcohol, drug, or
8 intoxicating compound problem exists and the extent of the
9 problem, and to undergo the imposition of treatment as
10 appropriate.

11 (b) (Blank).

12 (b-1) Upon receiving a report of the conviction of any
13 violation indicating a person was operating a motor vehicle
14 during the time when the person's driver's license, permit or
15 privilege was suspended by the Secretary of State or the
16 driver's licensing administrator of another state, except as
17 specifically allowed by a probationary license, judicial
18 driving permit, restricted driving permit or monitoring device
19 driving permit the Secretary shall extend the suspension for
20 the same period of time as the originally imposed suspension
21 unless the suspension has already expired, in which case the
22 Secretary shall be authorized to suspend the person's driving
23 privileges for the same period of time as the originally
24 imposed suspension.

25 (b-2) Except as provided in subsection (b-6), upon
26 receiving a report of the conviction of any violation

1 indicating a person was operating a motor vehicle when the
2 person's driver's license, permit or privilege was revoked by
3 the Secretary of State or the driver's license administrator of
4 any other state, except as specifically allowed by a restricted
5 driving permit issued pursuant to this Code or the law of
6 another state, the Secretary shall not issue a driver's license
7 for an additional period of one year from the date of such
8 conviction indicating such person was operating a vehicle
9 during such period of revocation.

10 (b-3) (Blank).

11 (b-4) When the Secretary of State receives a report of a
12 conviction of any violation indicating a person was operating a
13 motor vehicle that was not equipped with an ignition interlock
14 device during a time when the person was prohibited from
15 operating a motor vehicle not equipped with such a device, the
16 Secretary shall not issue a driver's license to that person for
17 an additional period of one year from the date of the
18 conviction.

19 (b-5) Any person convicted of violating this Section shall
20 serve a minimum term of imprisonment of 30 consecutive days or
21 300 hours of community service when the person's driving
22 privilege was revoked or suspended as a result of a violation
23 of Section 9-3 of the Criminal Code of 1961, as amended,
24 relating to the offense of reckless homicide, or a similar
25 provision of a law of another state.

26 (b-6) Upon receiving a report of a first conviction of

1 operating a motor vehicle while the person's driver's license,
2 permit or privilege was revoked where the revocation was for a
3 violation of Section 9-3 of the Criminal Code of 1961 relating
4 to the offense of reckless homicide or a similar out-of-state
5 offense, the Secretary shall not issue a driver's license for
6 an additional period of three years from the date of such
7 conviction.

8 (c) Except as provided in subsections (c-3) and (c-4), any
9 person convicted of violating this Section shall serve a
10 minimum term of imprisonment of 10 consecutive days or 30 days
11 of community service when the person's driving privilege was
12 revoked or suspended as a result of:

13 (1) a violation of Section 11-501 of this Code or a
14 similar provision of a local ordinance relating to the
15 offense of operating or being in physical control of a
16 vehicle while under the influence of alcohol, any other
17 drug or any combination thereof; or

18 (2) a violation of paragraph (b) of Section 11-401 of
19 this Code or a similar provision of a local ordinance
20 relating to the offense of leaving the scene of a motor
21 vehicle accident involving personal injury or death; or

22 (3) a statutory summary suspension or revocation under
23 Section 11-501.1 of this Code.

24 Such sentence of imprisonment or community service shall
25 not be subject to suspension in order to reduce such sentence.

26 (c-1) Except as provided in subsections (c-5) and (d), any

1 person convicted of a second violation of this Section shall be
2 ordered by the court to serve a minimum of 100 hours of
3 community service.

4 (c-2) In addition to other penalties imposed under this
5 Section, the court may impose on any person convicted a fourth
6 time of violating this Section any of the following:

7 (1) Seizure of the license plates of the person's
8 vehicle.

9 (2) Immobilization of the person's vehicle for a period
10 of time to be determined by the court.

11 (c-3) Any person convicted of a violation of this Section
12 during a period of summary suspension imposed pursuant to
13 Section 11-501.1 when the person was eligible for a MDDP shall
14 be guilty of a Class 4 felony and shall serve a minimum term of
15 imprisonment of 30 days.

16 (c-4) Any person who has been issued a MDDP and who is
17 convicted of a violation of this Section as a result of
18 operating or being in actual physical control of a motor
19 vehicle not equipped with an ignition interlock device at the
20 time of the offense shall be guilty of a Class 4 felony and
21 shall serve a minimum term of imprisonment of 30 days.

22 (c-5) Any person convicted of a second violation of this
23 Section is guilty of a Class 2 felony, is not eligible for
24 probation or conditional discharge, and shall serve a mandatory
25 term of imprisonment, if the revocation or suspension was for a
26 violation of Section 9-3 of the Criminal Code of 1961, relating

1 to the offense of reckless homicide, or a similar out-of-state
2 offense.

3 (d) Any person convicted of a second violation of this
4 Section shall be guilty of a Class 4 felony and shall serve a
5 minimum term of imprisonment of 30 days or 300 hours of
6 community service, as determined by the court, if the original
7 revocation or suspension was for a violation of Section 11-401
8 or 11-501 of this Code, or a similar out-of-state offense, or a
9 similar provision of a local ordinance, or a statutory summary
10 suspension or revocation under Section 11-501.1 of this Code.

11 (d-1) Except as provided in subsections (d-2), (d-2.5), and
12 (d-3), any person convicted of a third or subsequent violation
13 of this Section shall serve a minimum term of imprisonment of
14 30 days or 300 hours of community service, as determined by the
15 court.

16 (d-2) Any person convicted of a third violation of this
17 Section is guilty of a Class 4 felony and must serve a minimum
18 term of imprisonment of 30 days if the revocation or suspension
19 was for a violation of Section 11-401 or 11-501 of this Code,
20 or a similar out-of-state offense, or a similar provision of a
21 local ordinance, or a statutory summary suspension or
22 revocation under Section 11-501.1 of this Code.

23 (d-2.5) Any person convicted of a third violation of this
24 Section is guilty of a Class 1 felony, is not eligible for
25 probation or conditional discharge, and must serve a mandatory
26 term of imprisonment if the revocation or suspension was for a

1 violation of Section 9-3 of the Criminal Code of 1961, relating
2 to the offense of reckless homicide, or a similar out-of-state
3 offense. The person's driving privileges shall be revoked for
4 the remainder of the person's life.

5 (d-3) Any person convicted of a fourth, fifth, sixth,
6 seventh, eighth, or ninth violation of this Section is guilty
7 of a Class 4 felony and must serve a minimum term of
8 imprisonment of 180 days if the revocation or suspension was
9 for a violation of Section 11-401 or 11-501 of this Code, or a
10 similar out-of-state offense, or a similar provision of a local
11 ordinance, or a statutory summary suspension or revocation
12 under Section 11-501.1 of this Code.

13 (d-3.5) Any person convicted of a fourth or subsequent
14 violation of this Section is guilty of a Class 1 felony, is not
15 eligible for probation or conditional discharge, and must serve
16 a mandatory term of imprisonment, and is eligible for an
17 extended term, if the revocation or suspension was for a
18 violation of Section 9-3 of the Criminal Code of 1961, relating
19 to the offense of reckless homicide, or a similar out-of-state
20 offense.

21 (d-4) Any person convicted of a tenth, eleventh, twelfth,
22 thirteenth, or fourteenth violation of this Section is guilty
23 of a Class 3 felony, and is not eligible for probation or
24 conditional discharge, if the revocation or suspension was for
25 a violation of Section 11-401 or 11-501 of this Code, or a
26 similar out-of-state offense, or a similar provision of a local

1 ordinance, or a statutory summary suspension or revocation
2 under Section 11-501.1 of this Code.

3 (d-5) Any person convicted of a fifteenth or subsequent
4 violation of this Section is guilty of a Class 2 felony, and is
5 not eligible for probation or conditional discharge, if the
6 revocation or suspension was for a violation of Section 11-401
7 or 11-501 of this Code, or a similar out-of-state offense, or a
8 similar provision of a local ordinance, or a statutory summary
9 suspension or revocation under Section 11-501.1 of this Code.

10 (e) Any person in violation of this Section who is also in
11 violation of Section 7-601 of this Code relating to mandatory
12 insurance requirements, in addition to other penalties imposed
13 under this Section, shall have his or her motor vehicle
14 immediately impounded by the arresting law enforcement
15 officer. The motor vehicle may be released to any licensed
16 driver upon a showing of proof of insurance for the vehicle
17 that was impounded and the notarized written consent for the
18 release by the vehicle owner.

19 (f) For any prosecution under this Section, a certified
20 copy of the driving abstract of the defendant shall be admitted
21 as proof of any prior conviction.

22 (g) The motor vehicle used in a violation of this Section
23 is subject to seizure and forfeiture as provided in Sections
24 36-1 and 36-2 of the Criminal Code of 1961 if the person's
25 driving privilege was revoked or suspended as a result of:

26 (1) a violation of Section 11-501 of this Code, a

1 similar provision of a local ordinance, or a similar
2 provision of a law of another state;

3 (2) a violation of paragraph (b) of Section 11-401 of
4 this Code, a similar provision of a local ordinance, or a
5 similar provision of a law of another state;

6 (3) a statutory summary suspension or revocation under
7 Section 11-501.1 of this Code or a similar provision of a
8 law of another state; or

9 (4) a violation of Section 9-3 of the Criminal Code of
10 1961 relating to the offense of reckless homicide, or a
11 similar provision of a law of another state.

12 ~~listed in paragraph (1) or (2) of subsection (c) of this~~
13 ~~Section, as a result of a summary suspension or revocation as~~
14 ~~provided in paragraph (3) of subsection (c) of this Section, or~~
15 ~~as a result of a violation of Section 9-3 of the Criminal Code~~
16 ~~of 1961 relating to the offense of reckless homicide.~~

17 (Source: P.A. 95-27, eff. 1-1-08; 95-377, eff. 1-1-08; 95-400,
18 eff. 1-1-09; 95-578, eff. 6-1-08; 95-876, eff. 8-21-08; 95-991,
19 eff. 6-1-09; 96-502, eff. 1-1-10; 96-607, eff. 8-24-09;
20 96-1000, eff. 7-2-10; 96-1344, eff. 7-1-11.)".