

# SB2571



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB2571

Introduced 1/11/2012, by Sen. John M. Sullivan

#### SYNOPSIS AS INTRODUCED:

625 ILCS 5/5-102.7

Amends the Illinois Vehicle Code. Provides that for purposes of the Section concerning the Dealer Recovery Trust Fund, the definition of "dealer" excludes a dealer who sells vehicles to another dealer or auction house.

LRB097 14109 HEP 60600 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 5-102.7 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.

17 (b) The Dealer Recovery Trust Fund shall be used solely for  
18 the limited purpose of helping victims of dealership closings.  
19 Any interest accrued by moneys in the Fund shall be deposited  
20 and become part of the Dealer Recovery Trust Fund and its  
21 purpose. The sole beneficiaries of the Dealer Recovery Trust  
22 Fund are victims of dealership closings.

23 (c) Except where the context otherwise requires, the

1 following words and phrases, when used in this Section, have  
2 the meanings ascribed to them in this subsection (c):

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

5 "Board" means the Dealer Recovery Trust Fund Board created  
6 under this Section.

7 "Dealer" means a new vehicle dealer licensed under Section  
8 5-101 or a used vehicle dealer licensed under Section 5-102,  
9 excepting a dealer who primarily sells mobile homes,  
10 recreational vehicles, or trailers, ~~or~~ any dealer who sells 25  
11 vehicles or fewer per calendar year, or a dealer who sells  
12 vehicles to another dealer or auction house.

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

15 "Fund Administrator" means the private entity, which shall  
16 be appointed by the Board, that administers the Dealer Recovery  
17 Trust Fund.

18 (d) Beginning October 1, 2011, each application or renewal  
19 for a new vehicle dealer's license and each application or  
20 renewal for a used vehicle dealer's license shall be  
21 accompanied by the applicable Annual Dealer Recovery Fund Fee  
22 under Section 5-101 or 5-102 of this Code. The fee shall be in  
23 addition to any other fees imposed under this Article, shall be  
24 submitted at the same time an application or renewal for a new  
25 vehicle dealer's license or used vehicle dealer's license is  
26 submitted, and shall be made payable to and remitted directly

1 to the Dealer Recovery Trust Fund, a trust fund outside of the  
2 State Treasury which is hereby created. In addition, the Dealer  
3 Recovery Trust Fund may accept any federal, State, or private  
4 moneys for deposit into the Fund.

5 (e) The Fund Administrator shall maintain a list of all  
6 dealers who have paid the fee under subsection (d) of this  
7 Section for the current year, which shall be available to the  
8 Secretary of State and the Board. The Secretary of State shall  
9 revoke the dealer license of any dealer who does not pay the  
10 fee imposed under subsection (d) of this Section. The Secretary  
11 of State and the Fund Administrator may enter into information  
12 sharing agreements as needed to implement this Section.

13 (f) The Fund shall be audited annually by an independent  
14 auditor who is a certified public accountant and who has been  
15 selected by the Board. The independent auditor shall compile an  
16 annual report, which shall be filed with the Board and shall be  
17 a public record. The auditor shall be paid by the Fund,  
18 pursuant to an order of the Board.

19 (g) The Fund shall be maintained by the Fund Administrator,  
20 who shall keep current records of the amounts deposited into  
21 the Fund and the amounts paid out of the Fund pursuant to an  
22 order of the Board. These records shall be made available to  
23 all members of the Board upon reasonable request during normal  
24 business hours. The Fund Administrator shall report the balance  
25 in the Fund to the Board monthly, by the 15th day of each  
26 month. For purposes of determining the amount available to pay

1 claims under this Section at any meeting of the Board, the  
2 Board shall use the Fund Administrator's most recent monthly  
3 report. The Fund Administrator shall purchase liability  
4 insurance to cover management of the Fund at a cost not to  
5 exceed 2% of the balance in the Fund as of January 15th of that  
6 year.

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

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

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

20 (ii) to reimburse the Fund Administrator for its  
21 expenses related to the administration of the Fund,  
22 provided that the reimbursement to the Fund Administrator  
23 in any year shall not exceed 2% of the balance in the Fund  
24 as of January 15th of that year.

25 (j) The Dealer Recovery Trust Fund Board is hereby created.  
26 The Board shall consist of the Secretary of State, or his or

1 her designee, who shall serve as chair, the Attorney General,  
2 or his or her designee, who shall serve as secretary, and one  
3 person alternatively representing new and independent Illinois  
4 automobile dealers, selected collectively by the Attorney  
5 General, or his or her designee, and the Secretary of State, or  
6 his or her designee. The Secretary of State may propose  
7 procedures and employ personnel as necessary to implement this  
8 Section. The Board shall meet quarterly, and as needed, as  
9 directed by the chair. The Board may not pay out any claims  
10 before the balance deposited into the Fund exceeds \$500,000.  
11 Board meetings shall be open to the public. The Board has the  
12 authority to take any action by at least a two-thirds majority  
13 vote.

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

16 (i) A retail customer who, on or after October 1, 2011,  
17 purchases a vehicle from a dealer who subsequently files  
18 for bankruptcy or whose vehicle dealer's license is  
19 subsequently revoked by the Secretary of State or otherwise  
20 terminated and, as part of the purchase transaction, trades  
21 in a vehicle with an outstanding lien to the dealer if lien  
22 satisfaction was a condition of the purchase agreement and  
23 the retail customer determines that the lien has not been  
24 satisfied;

25 (ii) A retail customer who, on or after October 1,  
26 2011, purchases a vehicle with an undisclosed lien from a

1 dealer who subsequently files for bankruptcy or whose  
2 vehicle dealer's license is subsequently revoked by the  
3 Secretary of State or otherwise terminated;

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

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

12 (m) At each meeting of the Board, it shall consider all  
13 claims that are properly submitted to it on forms prescribed by  
14 the Secretary of State at least 30 days before the date of the  
15 Board's meeting. Before the Board may consider a claim against  
16 a dealer, it must make a written determination that the dealer  
17 has filed for bankruptcy under the provisions of 11 U.S.C.  
18 Chapter 7; that the Secretary of State has revoked his or her  
19 dealer's license; or that the license has been otherwise  
20 terminated. Once the Board has made this determination, it may  
21 consider the applicant's claim against the dealer. If a  
22 two-thirds majority of the Board determines that the dealer has  
23 committed a violation under subsection (k), it shall grant the  
24 applicant's claim. Except as otherwise provided in this  
25 Section, the maximum amount of any award for a claim under  
26 paragraph (i) of subsection (k) of this Section shall be equal

1 to the amount of the unpaid balance of the lien that the dealer  
2 agreed to pay off on behalf of the applicant as shown on the  
3 bill of sale or the retail installment sales contract. The  
4 maximum amount of any claim under paragraph (ii) or (iii) of  
5 subsection (k) of this Section shall be equal to the amount of  
6 the undisclosed lien. However, no award for a claim under  
7 subsection (k) of this Section shall exceed \$35,000.

8 (n) If the balance in the Fund at the time of any Board  
9 meeting is less than the amount of the total amount of all  
10 claims awarded at that meeting, then all awards made at that  
11 meeting shall be reduced, pro rata, so that the amount of  
12 claims does not exceed the balance in the Fund. Before it  
13 reviews new claims, the Board shall issue written orders to pay  
14 the remaining portion of any claims that were so reduced,  
15 provided that the balance in the Fund is sufficient to pay  
16 those claims.

17 (o) Whenever the balance of the Fund falls below \$500,000,  
18 the Board may charge dealers an additional assessment of up to  
19 \$50 to bring the balance to at least \$500,000. Not more than  
20 one additional assessment may be made against a dealer in any  
21 12-month period.

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

26 (q) The Board shall issue a written order directing the



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

13 (r) No dealer or principal associated with a dealer's  
14 license is eligible for licensure, renewal or relicensure until  
15 the full amount of reimbursement for an unpaid claim, plus  
16 interest as determined by the Board, is paid to the Fund.  
17 Nothing in this Section shall limit the authority of the  
18 Secretary of State to suspend, revoke, or levy civil penalties  
19 against a dealer, nor shall full repayment of the amount owed  
20 to the Fund nullify or modify the effect of any action by the  
21 Secretary.

22 (s) Nothing in this Section shall limit the right of any  
23 person to seek relief through civil action against any other  
24 person as an alternative to seeking reimbursement from the  
25 Fund.

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