

AN ACT concerning transportation.

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

Section 5. The Illinois Vehicle Code is amended by changing Sections 5-101, 5-102, and 5-501 and by adding Section 5-102.7 as follows:

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

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

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

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

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

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

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

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

5. A statement that the applicant has been approved for

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

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

If the permitted user has a liability insurance policy

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

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

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

includes a person who, with the permission of the new vehicle dealer, drives a vehicle owned or held for sale or lease by the new vehicle dealer for loaner purposes while the user's vehicle is being repaired or evaluated.

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

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

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

(i) \$1,000 for applicant's established place of business, and \$100 for each additional place of business, if any, to which the application pertains; but if the application is made after June 15 of any year, the license fee shall be \$500 for applicant's established place of business plus \$50 for each additional place of business, if any, to which the application pertains. License fees shall be returnable

only in the event that the application is denied by the Secretary of State. All moneys received by the Secretary of State as license fees under this subparagraph (i) ~~paragraph (7)(A) of subsection (b) of this Section~~ prior to applications for the 2004 licensing year shall be deposited into the Motor Vehicle Review Board Fund and shall be used to administer the Motor Vehicle Review Board under the Motor Vehicle Franchise Act. Of the money received by the Secretary of State as license fees under this subparagraph (i) ~~paragraph (7)(A) of subsection (b) of this Section~~ for the 2004 licensing year and thereafter, 10% shall be deposited into the Motor Vehicle Review Board Fund and shall be used to administer the Motor Vehicle Review Board under the Motor Vehicle Franchise Act and 90% shall be deposited into the General Revenue Fund.

(ii) Except as provided in subsection (h) of Section 5-102.7 of this Code, an Annual Dealer Recovery Fund Fee in the amount of \$500 for the applicant's established place of business, and \$50 for each additional place of business, if any, to which the application pertains; but if the application is made after June 15 of any year, the fee shall be \$250 for the applicant's established place of business plus \$25 for each additional place of business, if any, to which

the application pertains. License fees shall be returnable only in the event that the application is denied by the Secretary of State. Moneys received under this subparagraph (ii) shall be deposited into the Dealer Recovery Trust Fund.

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

(i) \$1,000 for applicant's established place of business, and \$50 for each additional place of business, if any, to which the application pertains; but if the application is made after June 15 of any year, the license fee shall be \$500 for applicant's established place of business plus \$25 for each additional place of business, if any, to which the application pertains. License fees shall be returnable only in the event that the application is denied by the Secretary of State. Of the money received by the Secretary of State as license fees under this subparagraph (i) ~~subsection~~ for the 2004 licensing year and thereafter, 95% shall be deposited into the General Revenue Fund.

(ii) Except as provided in subsection (h) of Section 5-102.7 of this Code, an Annual Dealer Recovery Fund Fee in the amount of \$500 for the applicant's established place of business, and \$50 for each

additional place of business, if any, to which the application pertains; but if the application is made after June 15 of any year, the fee shall be \$250 for the applicant's established place of business plus \$25 for each additional place of business, if any, to which the application pertains. License fees shall be returnable only in the event that the application is denied by the Secretary of State. Moneys received under this subparagraph (ii) shall be deposited into the Dealer Recovery Trust Fund.

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

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

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

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

(D) The Dealers, Transporters, Wreckers and

Rebuilders Laws of the Illinois Vehicle Code;

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

(F) The Retailers' Occupation Tax Act.

9. A statement that the applicant's officers, directors, shareholders having a 10% or greater ownership interest therein, proprietor, partner, member, officer, director, trustee, manager or other principals in the business have not committed in any calendar year 3 or more violations, as determined in any civil, criminal or administrative proceedings, of any one or more of the following Acts:

(A) The Consumer Finance Act;

(B) The Consumer Installment Loan Act;

(C) The Retail Installment Sales Act;

(D) The Motor Vehicle Retail Installment Sales Act;

(E) The Interest Act;

(F) The Illinois Wage Assignment Act;

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

(H) The Consumer Fraud Act.

10. A bond or certificate of deposit in the amount of \$20,000 for each location at which the applicant intends to act as a new vehicle dealer. The bond shall be for the term of the license, or its renewal, for which application is

made, and shall expire not sooner than December 31 of the year for which the license was issued or renewed. The bond shall run to the People of the State of Illinois, with surety by a bonding or insurance company authorized to do business in this State. It shall be conditioned upon the proper transmittal of all title and registration fees and taxes (excluding taxes under the Retailers' Occupation Tax Act) accepted by the applicant as a new vehicle dealer.

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

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

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

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

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

2. Such person shall maintain an established place of

business as defined in this Act.

(e) The Secretary of State shall, within a reasonable time after receipt, examine an application submitted to him under this Section and unless he makes a determination that the application submitted to him does not conform with the requirements of this Section or that grounds exist for a denial of the application, under Section 5-501 of this Chapter, grant the applicant an original new vehicle dealer's license in writing for his established place of business and a supplemental license in writing for each additional place of business in such form as he may prescribe by rule or regulation which shall include the following:

1. The name of the person licensed;
2. If a corporation, the name and address of its officers or if a sole proprietorship, a partnership, an unincorporated association or any similar form of business organization, the name and address of the proprietor or of each partner, member, officer, director, trustee or manager;
3. In the case of an original license, the established place of business of the licensee;
4. In the case of a supplemental license, the established place of business of the licensee and the additional place of business to which such supplemental license pertains;
5. The make or makes of new vehicles which the licensee

is licensed to sell.

(f) The appropriate instrument evidencing the license or a certified copy thereof, provided by the Secretary of State, shall be kept posted conspicuously in the established place of business of the licensee and in each additional place of business, if any, maintained by such licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

(625 ILCS 5/5-102) (from Ch. 95 1/2, par. 5-102)

Sec. 5-102. Used vehicle dealers must be licensed.

(a) No person, other than a licensed new vehicle dealer, shall engage in the business of selling or dealing in, on consignment or otherwise, 5 or more used vehicles of any make during the year (except house trailers as authorized by paragraph (j) of this Section and rebuilt salvage vehicles sold by their rebuilders to persons licensed under this Chapter), or act as an intermediary, agent or broker for any licensed dealer or vehicle purchaser (other than as a salesperson) or represent or advertise that he is so engaged or intends to so engage in such business unless licensed to do so by the Secretary of State under the provisions of this Section.

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

1. The name and type of business organization established and additional places of business, if any, in this State.

2. If the applicant is a corporation, a list of its officers, directors, and shareholders having a ten percent or greater ownership interest in the corporation, setting forth the residence address of each; if the applicant is a sole proprietorship, a partnership, an unincorporated

association, a trust, or any similar form of business organization, the names and residence address of the proprietor or of each partner, member, officer, director, trustee or manager.

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

4. A statement that the applicant has complied with the appropriate liability insurance requirement. A Certificate of Insurance in a solvent company authorized to do business in the State of Illinois shall be included with each application covering each location at which he proposes to act as a used vehicle dealer. The policy must provide liability coverage in the minimum amounts of \$100,000 for bodily injury to, or death of, any person, \$300,000 for bodily injury to, or death of, two or more persons in any one accident, and \$50,000 for damage to property. Such policy shall expire not sooner than December 31 of the year for which the license was issued or renewed. The expiration

of the insurance policy shall not terminate the liability under the policy arising during the period for which the policy was filed. Trailer and mobile home dealers are exempt from this requirement.

If the permitted user has a liability insurance policy that provides automobile liability insurance coverage of at least \$100,000 for bodily injury to or the death of any person, \$300,000 for bodily injury to or the death of any 2 or more persons in any one accident, and \$50,000 for damage to property, then the permitted user's insurer shall be the primary insurer and the dealer's insurer shall be the secondary insurer. If the permitted user does not have a liability insurance policy that provides automobile liability insurance coverage of at least \$100,000 for bodily injury to or the death of any person, \$300,000 for bodily injury to or the death of any 2 or more persons in any one accident, and \$50,000 for damage to property, or does not have any insurance at all, then the dealer's insurer shall be the primary insurer and the permitted user's insurer shall be the secondary insurer.

When a permitted user is "test driving" a used vehicle dealer's automobile, the used vehicle dealer's insurance shall be primary and the permitted user's insurance shall be secondary.

As used in this paragraph 4, a "permitted user" is a person who, with the permission of the used vehicle dealer

or an employee of the used vehicle dealer, drives a vehicle owned and held for sale or lease by the used vehicle dealer which the person is considering to purchase or lease, in order to evaluate the performance, reliability, or condition of the vehicle. The term "permitted user" also includes a person who, with the permission of the used vehicle dealer, drives a vehicle owned or held for sale or lease by the used vehicle dealer for loaner purposes while the user's vehicle is being repaired or evaluated.

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

As used in this paragraph 4, "loaner purposes" means when a person who, with the permission of the used vehicle dealer, drives a vehicle owned or held for sale or lease by the used vehicle dealer while the user's vehicle is being repaired or evaluated.

5. An application for a used vehicle dealer's license shall be accompanied by the following license fees:

(A) \$1,000 for applicant's established place of business, and \$50 for each additional place of business, if any, to which the application pertains;

however, if the application is made after June 15 of any year, the license fee shall be \$500 for applicant's established place of business plus \$25 for each additional place of business, if any, to which the application pertains. License fees shall be returnable only in the event that the application is denied by the Secretary of State. Of the money received by the Secretary of State as license fees under this subparagraph (A) Section for the 2004 licensing year and thereafter, 95% shall be deposited into the General Revenue Fund.

(B) Except as provided in subsection (h) of Section 5-102.7 of this Code, an Annual Dealer Recovery Fund Fee in the amount of \$500 for the applicant's established place of business, and \$50 for each additional place of business, if any, to which the application pertains; but if the application is made after June 15 of any year, the fee shall be \$250 for the applicant's established place of business plus \$25 for each additional place of business, if any, to which the application pertains. License fees shall be returnable only in the event that the application is denied by the Secretary of State. Moneys received under this subparagraph (B) shall be deposited into the Dealer Recovery Trust Fund.

6. A statement that the applicant's officers,

directors, shareholders having a 10% or greater ownership interest therein, proprietor, partner, member, officer, director, trustee, manager or other principals in the business have not committed in the past 3 years any one violation as determined in any civil, criminal or administrative proceedings of any one of the following Acts:

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

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

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

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

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

(F) The Retailers' Occupation Tax Act.

7. A statement that the applicant's officers, directors, shareholders having a 10% or greater ownership interest therein, proprietor, partner, member, officer, director, trustee, manager or other principals in the business have not committed in any calendar year 3 or more violations, as determined in any civil or criminal or administrative proceedings, of any one or more of the

following Acts:

- (A) The Consumer Finance Act;
- (B) The Consumer Installment Loan Act;
- (C) The Retail Installment Sales Act;
- (D) The Motor Vehicle Retail Installment Sales Act;
- (E) The Interest Act;
- (F) The Illinois Wage Assignment Act;
- (G) Part 8 of Article XII of the Code of Civil Procedure; or
- (H) The Consumer Fraud Act.

8. A bond or Certificate of Deposit in the amount of \$20,000 for each location at which the applicant intends to act as a used vehicle dealer. The bond shall be for the term of the license, or its renewal, for which application is made, and shall expire not sooner than December 31 of the year for which the license was issued or renewed. The bond shall run to the People of the State of Illinois, with surety by a bonding or insurance company authorized to do business in this State. It shall be conditioned upon the proper transmittal of all title and registration fees and taxes (excluding taxes under the Retailers' Occupation Tax Act) accepted by the applicant as a used vehicle dealer.

9. Such other information concerning the business of the applicant as the Secretary of State may by rule or regulation prescribe.

10. A statement that the applicant understands Chapter 1 through Chapter 5 of this Code.

11. A copy of the certification from the prelicensing education program.

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

(d) Anything in this Chapter to the contrary notwithstanding, no person shall be licensed as a used vehicle dealer unless such person maintains an established place of business as defined in this Chapter.

(e) The Secretary of State shall, within a reasonable time after receipt, examine an application submitted to him under this Section. Unless the Secretary makes a determination that the application submitted to him does not conform to this Section or that grounds exist for a denial of the application under Section 5-501 of this Chapter, he must grant the applicant an original used vehicle dealer's license in writing for his established place of business and a supplemental license in writing for each additional place of business in such form as he may prescribe by rule or regulation which shall include the following:

1. The name of the person licensed;

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

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

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

(f) The appropriate instrument evidencing the license or a certified copy thereof, provided by the Secretary of State shall be kept posted, conspicuously, in the established place of business of the licensee and in each additional place of business, if any, maintained by such licensee.

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

(h) A used vehicle dealer's license may be renewed upon application and payment of the fee required herein, and submission of proof of coverage by an approved bond under the "Retailers' Occupation Tax Act" or proof that applicant is not

subject to such bonding requirements, as in the case of an original license, but in case an application for the renewal of an effective license is made during the month of December, the effective license shall remain in force until the application for renewal is granted or denied by the Secretary of State.

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

1. A certificate of title properly assigned to the purchaser;

2. A statement verified under oath that all identifying numbers on the vehicle agree with those on the certificate of title;

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

4. A copy of the Uniform Invoice-transaction reporting return referred to in Section 5-402 of this Chapter;

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

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

(j) A real estate broker holding a valid certificate of registration issued pursuant to "The Real Estate Brokers and Salesmen License Act" may engage in the business of selling or dealing in house trailers not his own without being licensed as a used vehicle dealer under this Section; however such broker shall maintain a record of the transaction including the

following:

- (1) the name and address of the buyer and seller,
- (2) the date of sale,
- (3) a description of the mobile home, including the vehicle identification number, make, model, and year, and
- (4) the Illinois certificate of title number.

The foregoing records shall be available for inspection by any officer of the Secretary of State's Office at any reasonable hour.

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

A used vehicle dealer who violates this subsection (k) is guilty of a petty offense. Violation of this subsection (k) is not cause to suspend, revoke, cancel, or deny renewal of the used vehicle dealer's license.

(l) Used vehicle dealers licensed under this Section shall provide the Secretary of State a register for the sale at auction of each salvage or junk certificate vehicle. Each register shall include the following information:

1. The year, make, model, style and color of the vehicle;

2. The vehicle's manufacturer's identification number or, if applicable, the Secretary of State or Illinois Department of State Police identification number;

3. The date of acquisition of the vehicle;

4. The name and address of the person from whom the vehicle was acquired;

5. The name and address of the person to whom any vehicle was disposed, the person's Illinois license number or if the person is an out-of-state salvage vehicle buyer, the license number from the state or jurisdiction where the buyer is licensed; and

6. The purchase price of the vehicle.

The register shall be submitted to the Secretary of State via written or electronic means within 10 calendar days from the date of the auction.

(Source: P.A. 95-783, eff. 1-1-09; 96-678, eff. 8-25-09.)

(625 ILCS 5/5-102.7 new)

Sec. 5-102.7. Dealer Recovery Trust Fund.

(a) The General Assembly finds that motor vehicle dealers that go out of business without fulfilling agreements to pay off the balance of their customers' liens on traded-in vehicles cause financial harm to those customers by leaving those customers liable for multiple vehicle loans and cause harm to the integrity of the motor vehicle retailing industry. It is the intent of the General Assembly to protect vehicle

purchasers by creating a Dealer Recovery Trust Fund to reimburse these consumers.

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

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

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

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

"Dealer" means a new vehicle dealer licensed under Section 5-101 or a used vehicle dealer licensed under Section 5-102, excepting a dealer who primarily sells mobile homes, recreational vehicles, or trailers or any dealer who sells 25 vehicles or fewer per calendar year.

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

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

(d) Beginning October 1, 2011, each application or renewal

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

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

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

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

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

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

(i) to pay claims under a written order of the Board as

provided in this Section; or

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

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

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

(i) A retail customer who, on or after October 1, 2011, purchases a vehicle from a dealer who subsequently files for bankruptcy or whose vehicle dealer's license is

subsequently revoked by the Secretary of State or otherwise terminated and, as part of the purchase transaction, trades in a vehicle with an outstanding lien to the dealer if lien satisfaction was a condition of the purchase agreement and the retail customer determines that the lien has not been satisfied;

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

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

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

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

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

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

(o) Whenever the balance of the Fund falls below \$500,000, the Board may charge dealers an additional assessment of up to

\$50 to bring the balance to at least \$500,000. Not more than one additional assessment may be made against a dealer in any 12-month period.

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

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

(r) No dealer or principal associated with a dealer's license is eligible for licensure, renewal or relicensure until the full amount of reimbursement for an unpaid claim, plus interest as determined by the Board, is paid to the Fund. Nothing in this Section shall limit the authority of the Secretary of State to suspend, revoke, or levy civil penalties

against a dealer, nor shall full repayment of the amount owed to the Fund nullify or modify the effect of any action by the Secretary.

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

(625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

Sec. 5-501. Denial, suspension or revocation or cancellation of a license.

(a) The license of a person issued under this Chapter may be denied, revoked or suspended if the Secretary of State finds that the applicant, or the officer, director, shareholder having a ten percent or greater ownership interest in the corporation, owner, partner, trustee, manager, employee or the licensee has:

1. Violated this Act;
2. Made any material misrepresentation to the Secretary of State in connection with an application for a license, junking certificate, salvage certificate, title or registration;
3. Committed a fraudulent act in connection with selling, bartering, exchanging, offering for sale or otherwise dealing in vehicles, chassis, essential parts, or vehicle shells;

4. As a new vehicle dealer has no contract with a manufacturer or enfranchised distributor to sell that new vehicle in this State;

5. Not maintained an established place of business as defined in this Code;

6. Failed to file or produce for the Secretary of State any application, report, document or other pertinent books, records, documents, letters, contracts, required to be filed or produced under this Code or any rule or regulation made by the Secretary of State pursuant to this Code;

7. Previously had, within 3 years, such a license denied, suspended, revoked, or cancelled under the provisions of subsection (c) (2) of this Section;

8. Has committed in any calendar year 3 or more violations, as determined in any civil or criminal proceeding, of any one or more of the following Acts:

a. the "Consumer Finance Act";

b. the "Consumer Installment Loan Act";

c. the "Retail Installment Sales Act";

d. the "Motor Vehicle Retail Installment Sales Act";

e. "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money", approved May 24, 1879, as amended;

f. "An Act to promote the welfare of wage-earners by regulating the assignment of wages, and prescribing a penalty for the violation thereof", approved July 1, 1935, as amended;

g. Part 8 of Article XII of the Code of Civil Procedure; or

h. the "Consumer Fraud Act";

9. Failed to pay any fees or taxes due under this Act, or has failed to transmit any fees or taxes received by him for transmittal by him to the Secretary of State or the State of Illinois;

10. Converted an abandoned vehicle;

11. Used a vehicle identification plate or number assigned to a vehicle other than the one to which originally assigned;

12. Violated the provisions of Chapter 5 of this Act, as amended;

13. Violated the provisions of Chapter 4 of this Act, as amended;

14. Violated the provisions of Chapter 3 of this Act, as amended;

15. Violated Section 21-2 of the Criminal Code of 1961, Criminal Trespass to Vehicles;

16. Made or concealed a material fact in connection with his application for a license;

17. Acted in the capacity of a person licensed or acted

as a licensee under this Chapter without having a license therefor;

18. Failed to pay, within 90 days after a final judgment, any fines assessed against the licensee pursuant to an action brought under Section 5-404;~~;~~

19. Failed to pay the Dealer Recovery Trust Fund fee under Section 5-102.7 of this Code.

(b) In addition to other grounds specified in this Chapter, the Secretary of State, on complaint of the Department of Revenue, shall refuse the issuance or renewal of a license, or suspend or revoke such license, for any of the following violations of the "Retailers' Occupation Tax Act":

1. Failure to make a tax return;
2. The filing of a fraudulent return;
3. Failure to pay all or part of any tax or penalty finally determined to be due;
4. Failure to comply with the bonding requirements of the "Retailers' Occupation Tax Act".

(b-1) In addition to other grounds specified in this Chapter, the Secretary of State, on complaint of the Motor Vehicle Review Board, shall refuse the issuance or renewal of a license, or suspend or revoke that license, if costs or fees assessed under Section 29 or Section 30 of the Motor Vehicle Franchise Act have remained unpaid for a period in excess of 90 days after the licensee received from the Motor Vehicle Board a second notice and demand for the costs or fees. The Motor

Vehicle Review Board must send the licensee written notice and demand for payment of the fees or costs at least 2 times, and the second notice and demand must be sent by certified mail.

(c) Cancellation of a license.

1. The license of a person issued under this Chapter may be cancelled by the Secretary of State prior to its expiration in any of the following situations:

A. When a license is voluntarily surrendered, by the licensed person; or

B. If the business enterprise is a sole proprietorship, which is not a franchised dealership, when the sole proprietor dies or is imprisoned for any period of time exceeding 30 days; or

C. If the license was issued to the wrong person or corporation, or contains an error on its face. If any person above whose license has been cancelled wishes to apply for another license, whether during the same license year or any other year, that person shall be treated as any other new applicant and the cancellation of the person's prior license shall not, in and of itself, be a bar to the issuance of a new license.

2. The license of a person issued under this Chapter may be cancelled without a hearing when the Secretary of State is notified that the applicant, or any officer, director, shareholder having a 10 per cent or greater ownership interest in the corporation, owner, partner,

trustee, manager, employee or member of the applicant or the licensee has been convicted of any felony involving the selling, bartering, exchanging, offering for sale, or otherwise dealing in vehicles, chassis, essential parts, vehicle shells, or ownership documents relating to any of the above items.

(Source: P.A. 94-287, eff. 1-1-06.)

Section 99. Effective date. This Act takes effect October 1, 2011.