



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB1687

Introduced 2/9/2017, by Sen. Martin A. Sandoval

#### SYNOPSIS AS INTRODUCED:

815 ILCS 710/1.1	from Ch. 121 1/2, par. 751.1
815 ILCS 710/1.5 new	
815 ILCS 710/2	from Ch. 121 1/2, par. 752
815 ILCS 710/4	from Ch. 121 1/2, par. 754
815 ILCS 710/12	from Ch. 121 1/2, par. 762

Amends the Motor Vehicle Franchise Act. Provides additional findings that the regulation of motor vehicle manufacturers creates a system for servicing vehicles and complying with warranties. Provides that paying manufacturer's and distributor's fees under the Illinois Vehicle Code constitutes agreement with the terms of the Motor Vehicle Franchise Act. Limits the ability of a manufacturer to penalize a dealer if a customer resells or exports a vehicle. Limits a manufacturer from requiring dealer improvements or requiring that dealers use specific vendors for improvements. Effective immediately.

LRB100 07840 JLS 17909 b

1 AN ACT concerning business.

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

4 Section 5. The Motor Vehicle Franchise Act is amended by  
5 changing Sections 1.1, 2, 4, and 12 and by adding Section 1.5  
6 as follows:

7 (815 ILCS 710/1.1) (from Ch. 121 1/2, par. 751.1)

8 Sec. 1.1. Declaration of purpose. The Legislature finds and  
9 declares that the distribution and sale of vehicles within this  
10 State vitally affects the general economy of the State and the  
11 public interest, and welfare, and safety and that in order to  
12 promote the public interest, and welfare, and safety, and in  
13 the exercise of its police power, it is necessary to regulate  
14 motor vehicle manufacturers, distributors, wholesalers and  
15 factory or distributor branches or representatives, and to  
16 regulate dealers of motor vehicles doing business in this State  
17 in order to prevent frauds, impositions, discrimination, and  
18 other abuses upon its citizens, to protect and preserve the  
19 investments and properties of the citizens of this State, to  
20 foster healthy competition, and to provide adequate and  
21 sufficient service to consumers generally. The licensing and  
22 supervision of motor vehicle dealers is necessary for the  
23 protection of consumers and the sale of motor vehicles by

1 unlicensed dealers should be prevented.

2 The Legislature further finds that the regulation of motor  
3 vehicle manufacturers, distributors, wholesalers, factory  
4 branches, distributor branches and representatives, and  
5 dealers promotes the distribution of motor vehicles to the  
6 public and provides a system for servicing vehicles and for  
7 complying with manufacturer warranties so that consumers can  
8 keep their motor vehicles properly functioning and safe. The  
9 sale and distribution of motor vehicles constitutes a  
10 continuing obligation of manufacturers, distributors,  
11 wholesalers, factory branches, distributor branches and  
12 representatives, and dealers to consumers, and the public has  
13 an interest in promoting the availability of post-sale  
14 mechanical and operational services.

15 (Source: P.A. 83-922.)

16 (815 ILCS 710/1.5 new)

17 Sec. 1.5. Manufacturer's and distributor's fee. By paying  
18 the fee imposed under Section 5-109 of the Illinois Vehicle  
19 Code, a manufacturer or distributor agrees that the terms of  
20 this Act, as now or hereafter amended, apply to any franchise  
21 agreement in effect between the manufacturer or distributor and  
22 its franchised dealers.

23 (815 ILCS 710/2) (from Ch. 121 1/2, par. 752)

24 Sec. 2. Definitions. As used in this Act, the following

1 words shall, unless the context otherwise requires, have the  
2 following meanings:

3 (a) "Motor vehicle", any motor driven vehicle required to  
4 be registered under "The Illinois Vehicle Code". Beginning  
5 January 1, 2010, the term "motor vehicle" also includes any  
6 engine, transmission, or rear axle, regardless of whether it is  
7 attached to a vehicle chassis, that is manufactured for  
8 installation in any motor-driven vehicle with a gross vehicle  
9 weight rating of more than 16,000 pounds that is required to be  
10 registered under the Illinois Vehicle Code.

11 (b) "Manufacturer", any person engaged in the business of  
12 manufacturing or assembling new and unused motor vehicles.  
13 "Manufacturer" includes a factory branch, distributor, and  
14 distributor branch.

15 (c) "Factory branch", a branch office maintained by a  
16 manufacturer which manufactures or assembles motor vehicles  
17 for sale to distributors or motor vehicle dealers or which is  
18 maintained for directing and supervising the representatives  
19 of the manufacturer.

20 (d) "Distributor branch", a branch office maintained by a  
21 distributor or wholesaler who or which sells or distributes new  
22 or used motor vehicles to motor vehicle dealers.

23 (e) "Factory representative", a representative employed by  
24 a manufacturer or employed by a factory branch for the purpose  
25 of making or promoting the sale of motor vehicles or for  
26 contracting with, supervising, servicing or instructing motor

1 vehicle dealers or prospective motor vehicle dealers.

2 (f) "Distributor representative", a representative  
3 employed by a distributor branch, distributor or wholesaler.

4 (g) "Distributor" or "wholesaler", any person who sells or  
5 distributes new or used motor vehicles to motor vehicle dealers  
6 or who maintains distributor representatives within the State.

7 (h) "Motor vehicle dealer", any person who, in the ordinary  
8 course of business, is engaged in the business of selling new  
9 or used motor vehicles to consumers or other end users.

10 (i) "Franchise", an oral or written arrangement for a  
11 definite or indefinite period in which a manufacturer,  
12 distributor or wholesaler grants to a motor vehicle dealer a  
13 license to use a trade name, service mark, or related  
14 characteristic, and in which there is a community of interest  
15 in the marketing of motor vehicles or services related thereto  
16 at wholesale, retail, leasing or otherwise.

17 (j) "Franchiser", a manufacturer, distributor or  
18 wholesaler who grants a franchise to a motor vehicle dealer.

19 (k) "Franchisee", a motor vehicle dealer to whom a  
20 franchise is offered or granted.

21 (l) "Sale", shall include the issuance, transfer,  
22 agreement for transfer, exchange, pledge, hypothecation,  
23 mortgage in any form, whether by transfer in trust or  
24 otherwise, of any motor vehicle or interest therein or of any  
25 franchise related thereto; and any option, subscription or  
26 other contract or solicitation, looking to a sale, or offer or

1 attempt to sell in any form, whether oral or written. A gift or  
2 delivery of any motor vehicle or franchise with respect thereto  
3 with or as a bonus on account of the sale of anything shall be  
4 deemed a sale of such motor vehicle or franchise.

5 (m) "Fraud", shall include, in addition to its normal legal  
6 connotation, the following: a misrepresentation in any manner,  
7 whether intentionally false or due to reckless disregard for  
8 truth or falsity, of a material fact; a promise or  
9 representation not made honestly and in good faith; and an  
10 intentional failure to disclose a material fact.

11 (n) "Person", a natural person, corporation, partnership,  
12 trust or other entity, and in case of an entity, it shall  
13 include any other entity in which it has a majority interest or  
14 which it effectively controls as well as the individual  
15 officers, directors and other persons in active control of the  
16 activities of each such entity.

17 (o) "New motor vehicle", a motor vehicle which has not been  
18 previously sold to any person except a distributor or  
19 wholesaler or motor vehicle dealer for resale.

20 (p) "Market Area", the franchisee's area of primary  
21 responsibility as defined in its franchise.

22 (q) "Relevant Market Area", the area within a radius of 10  
23 miles from the principal location of a franchise or dealership  
24 if said principal location is in a county having a population  
25 of more than 300,000 persons; if the principal location of a  
26 franchise or dealership is in a county having a population of

1 less than 300,000 persons, then "relevant market area" shall  
2 mean the area within a radius of 15 miles from the principal  
3 location of said franchise or dealership.

4 (r) "Late model vehicle" means a vehicle of the current  
5 model year and one, 2, or 3 preceding model years for which the  
6 motor vehicle dealer holds an existing franchise from the  
7 manufacturer for that same line make.

8 (s) "Factory repurchase vehicle" means a motor vehicle of  
9 the current model year or a late model vehicle reacquired by  
10 the manufacturer under an existing agreement or otherwise from  
11 a fleet, lease or daily rental company or under any State or  
12 federal law or program relating to allegedly defective new  
13 motor vehicles, and offered for sale and resold by the  
14 manufacturer directly or at a factory authorized or sponsored  
15 auction.

16 (t) "Board" means the Motor Vehicle Review Board created  
17 under this Act.

18 (u) "Secretary of State" means the Secretary of State of  
19 Illinois.

20 (v) "Good cause" means facts establishing commercial  
21 reasonableness in lawful or privileged competition and  
22 business practices as defined at common law.

23 (Source: P.A. 95-678, eff. 10-11-07; 96-11, eff. 5-22-09.)

24 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

25 Sec. 4. Unfair competition and practices.

1           (a) The unfair methods of competition and unfair and  
2 deceptive acts or practices listed in this Section are hereby  
3 declared to be unlawful. In construing the provisions of this  
4 Section, the courts may be guided by the interpretations of the  
5 Federal Trade Commission Act (15 U.S.C. 45 et seq.), as from  
6 time to time amended.

7           (b) It shall be deemed a violation for any manufacturer,  
8 factory branch, factory representative, distributor or  
9 wholesaler, distributor branch, distributor representative or  
10 motor vehicle dealer to engage in any action with respect to a  
11 franchise which is arbitrary, in bad faith or unconscionable  
12 and which causes damage to any of the parties or to the public.

13           (c) It shall be deemed a violation for a manufacturer, a  
14 distributor, a wholesaler, a distributor branch or division, a  
15 factory branch or division, or a wholesale branch or division,  
16 or officer, agent or other representative thereof, to coerce,  
17 or attempt to coerce, any motor vehicle dealer:

18           (1) to accept, buy or order any motor vehicle or  
19 vehicles, appliances, equipment, parts or accessories  
20 therefor, or any other commodity or commodities or service  
21 or services which such motor vehicle dealer has not  
22 voluntarily ordered or requested except items required by  
23 applicable local, state or federal law; or to require a  
24 motor vehicle dealer to accept, buy, order or purchase such  
25 items in order to obtain any motor vehicle or vehicles or  
26 any other commodity or commodities which have been ordered



1 or requested by such motor vehicle dealer;

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

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

10 (d) It shall be deemed a violation for a manufacturer, a  
11 distributor, a wholesaler, a distributor branch or division, or  
12 officer, agent or other representative thereof:

13 (1) to adopt, change, establish or implement a plan or  
14 system for the allocation and distribution of new motor  
15 vehicles to motor vehicle dealers which is arbitrary or  
16 capricious or to modify an existing plan so as to cause the  
17 same to be arbitrary or capricious;

18 (2) to fail or refuse to advise or disclose to any  
19 motor vehicle dealer having a franchise or selling  
20 agreement, upon written request therefor, the basis upon  
21 which new motor vehicles of the same line make are  
22 allocated or distributed to motor vehicle dealers in the  
23 State and the basis upon which the current allocation or  
24 distribution is being made or will be made to such motor  
25 vehicle dealer;

26 (3) to refuse to deliver in reasonable quantities and

1 within a reasonable time after receipt of dealer's order,  
2 to any motor vehicle dealer having a franchise or selling  
3 agreement for the retail sale of new motor vehicles sold or  
4 distributed by such manufacturer, distributor, wholesaler,  
5 distributor branch or division, factory branch or division  
6 or wholesale branch or division, any such motor vehicles as  
7 are covered by such franchise or selling agreement  
8 specifically publicly advertised in the State by such  
9 manufacturer, distributor, wholesaler, distributor branch  
10 or division, factory branch or division, or wholesale  
11 branch or division to be available for immediate delivery.  
12 However, the failure to deliver any motor vehicle shall not  
13 be considered a violation of this Act if such failure is  
14 due to an act of God, a work stoppage or delay due to a  
15 strike or labor difficulty, a shortage of materials, a lack  
16 of manufacturing capacity, a freight embargo or other cause  
17 over which the manufacturer, distributor, or wholesaler,  
18 or any agent thereof has no control;

19 (4) to coerce, or attempt to coerce, any motor vehicle  
20 dealer to enter into any agreement with such manufacturer,  
21 distributor, wholesaler, distributor branch or division,  
22 factory branch or division, or wholesale branch or  
23 division, or officer, agent or other representative  
24 thereof, or to do any other act prejudicial to the dealer  
25 by threatening to reduce his allocation of motor vehicles  
26 or cancel any franchise or any selling agreement existing

1           between such manufacturer, distributor, wholesaler,  
2           distributor branch or division, or factory branch or  
3           division, or wholesale branch or division, and the dealer.  
4           However, notice in good faith to any motor vehicle dealer  
5           of the dealer's violation of any terms or provisions of  
6           such franchise or selling agreement or of any law or  
7           regulation applicable to the conduct of a motor vehicle  
8           dealer shall not constitute a violation of this Act;

9           (5) to require a franchisee to participate in an  
10          advertising campaign or contest or any promotional  
11          campaign, or to purchase or lease any promotional  
12          materials, training materials, show room or other display  
13          decorations or materials at the expense of the franchisee;

14          (6) to cancel or terminate the franchise or selling  
15          agreement of a motor vehicle dealer without good cause and  
16          without giving notice as hereinafter provided; to fail or  
17          refuse to extend the franchise or selling agreement of a  
18          motor vehicle dealer upon its expiration without good cause  
19          and without giving notice as hereinafter provided; or, to  
20          offer a renewal, replacement or succeeding franchise or  
21          selling agreement containing terms and provisions the  
22          effect of which is to substantially change or modify the  
23          sales and service obligations or capital requirements of  
24          the motor vehicle dealer arbitrarily and without good cause  
25          and without giving notice as hereinafter provided  
26          notwithstanding any term or provision of a franchise or

1 selling agreement.

2 (A) If a manufacturer, distributor, wholesaler,  
3 distributor branch or division, factory branch or  
4 division or wholesale branch or division intends to  
5 cancel or terminate a franchise or selling agreement or  
6 intends not to extend or renew a franchise or selling  
7 agreement on its expiration, it shall send a letter by  
8 certified mail, return receipt requested, to the  
9 affected franchisee at least 60 days before the  
10 effective date of the proposed action, or not later  
11 than 10 days before the proposed action when the reason  
12 for the action is based upon either of the following:

13 (i) the business operations of the franchisee  
14 have been abandoned or the franchisee has failed to  
15 conduct customary sales and service operations  
16 during customary business hours for at least 7  
17 consecutive business days unless such closing is  
18 due to an act of God, strike or labor difficulty or  
19 other cause over which the franchisee has no  
20 control; or

21 (ii) the conviction of or plea of nolo  
22 contendere by the motor vehicle dealer or any  
23 operator thereof in a court of competent  
24 jurisdiction to an offense punishable by  
25 imprisonment for more than two years.

26 Each notice of proposed action shall include a

1 detailed statement setting forth the specific grounds  
2 for the proposed cancellation, termination, or refusal  
3 to extend or renew and shall state that the dealer has  
4 only 30 days from receipt of the notice to file with  
5 the Motor Vehicle Review Board a written protest  
6 against the proposed action.

7 (B) If a manufacturer, distributor, wholesaler,  
8 distributor branch or division, factory branch or  
9 division or wholesale branch or division intends to  
10 change substantially or modify the sales and service  
11 obligations or capital requirements of a motor vehicle  
12 dealer as a condition to extending or renewing the  
13 existing franchise or selling agreement of such motor  
14 vehicle dealer, it shall send a letter by certified  
15 mail, return receipt requested, to the affected  
16 franchisee at least 60 days before the date of  
17 expiration of the franchise or selling agreement. Each  
18 notice of proposed action shall include a detailed  
19 statement setting forth the specific grounds for the  
20 proposed action and shall state that the dealer has  
21 only 30 days from receipt of the notice to file with  
22 the Motor Vehicle Review Board a written protest  
23 against the proposed action.

24 (C) Within 30 days from receipt of the notice under  
25 subparagraphs (A) and (B), the franchisee may file with  
26 the Board a written protest against the proposed

1 action.

2 When the protest has been timely filed, the Board  
3 shall enter an order, fixing a date (within 60 days of  
4 the date of the order), time, and place of a hearing on  
5 the protest required under Sections 12 and 29 of this  
6 Act, and send by certified mail, return receipt  
7 requested, a copy of the order to the manufacturer that  
8 filed the notice of intention of the proposed action  
9 and to the protesting dealer or franchisee.

10 The manufacturer shall have the burden of proof to  
11 establish that good cause exists to cancel or  
12 terminate, or fail to extend or renew the franchise or  
13 selling agreement of a motor vehicle dealer or  
14 franchisee, and to change substantially or modify the  
15 sales and service obligations or capital requirements  
16 of a motor vehicle dealer as a condition to extending  
17 or renewing the existing franchise or selling  
18 agreement. The determination whether good cause exists  
19 to cancel, terminate, or refuse to renew or extend the  
20 franchise or selling agreement, or to change or modify  
21 the obligations of the dealer as a condition to offer  
22 renewal, replacement, or succession shall be made by  
23 the Board under subsection (d) of Section 12 of this  
24 Act.

25 (D) Notwithstanding the terms, conditions, or  
26 provisions of a franchise or selling agreement, the

1 following shall not constitute good cause for  
2 cancelling or terminating or failing to extend or renew  
3 the franchise or selling agreement: (i) the change of  
4 ownership or executive management of the franchisee's  
5 dealership; or (ii) the fact that the franchisee or  
6 owner of an interest in the franchise owns, has an  
7 investment in, participates in the management of, or  
8 holds a license for the sale of the same or any other  
9 line make of new motor vehicles.

10 (E) The manufacturer may not cancel or terminate,  
11 or fail to extend or renew a franchise or selling  
12 agreement or change or modify the obligations of the  
13 franchisee as a condition to offering a renewal,  
14 replacement, or succeeding franchise or selling  
15 agreement before the hearing process is concluded as  
16 prescribed by this Act, and thereafter, if the Board  
17 determines that the manufacturer has failed to meet its  
18 burden of proof and that good cause does not exist to  
19 allow the proposed action;

20 (7) notwithstanding the terms of any franchise  
21 agreement, to fail to indemnify and hold harmless its  
22 franchised dealers against any judgment or settlement for  
23 damages, including, but not limited to, court costs, expert  
24 witness fees, reasonable attorneys' fees of the new motor  
25 vehicle dealer, and other expenses incurred in the  
26 litigation, so long as such fees and costs are reasonable,

1 arising out of complaints, claims or lawsuits including,  
2 but not limited to, strict liability, negligence,  
3 misrepresentation, warranty (express or implied), or  
4 rescission ~~recession~~ of the sale as defined in Section 2-608  
5 of the Uniform Commercial Code, to the extent that the  
6 judgment or settlement relates to the alleged defective or  
7 negligent manufacture, assembly or design of new motor  
8 vehicles, parts or accessories or other functions by the  
9 manufacturer, beyond the control of the dealer; provided  
10 that, in order to provide an adequate defense, the  
11 manufacturer receives notice of the filing of a complaint,  
12 claim, or lawsuit within 60 days after the filing;

13 (8) to require or otherwise coerce a motor vehicle  
14 dealer to underutilize the motor vehicle dealer's  
15 facilities by requiring or otherwise coercing the motor  
16 vehicle dealer to exclude or remove from the motor vehicle  
17 dealer's facilities operations for selling or servicing of  
18 any vehicles for which the motor vehicle dealer has a  
19 franchise agreement with another manufacturer,  
20 distributor, wholesaler, distribution branch or division,  
21 or officer, agent, or other representative thereof;  
22 provided, however, that, in light of all existing  
23 circumstances, (i) the motor vehicle dealer maintains a  
24 reasonable line of credit for each make or line of new  
25 motor vehicle, (ii) the new motor vehicle dealer remains in  
26 compliance with any reasonable facilities requirements of



1 the manufacturer, (iii) no change is made in the principal  
2 management of the new motor vehicle dealer, and (iv) the  
3 addition of the make or line of new motor vehicles would be  
4 reasonable. The reasonable facilities requirement set  
5 forth in item (ii) of subsection (d)(8) shall not include  
6 any requirement that a franchisee establish or maintain  
7 exclusive facilities, personnel, or display space. Any  
8 decision by a motor vehicle dealer to sell additional makes  
9 or lines at the motor vehicle dealer's facility shall be  
10 presumed to be reasonable, and the manufacturer shall have  
11 the burden to overcome that presumption. A motor vehicle  
12 dealer must provide a written notification of its intent to  
13 add a make or line of new motor vehicles to the  
14 manufacturer. If the manufacturer does not respond to the  
15 motor vehicle dealer, in writing, objecting to the addition  
16 of the make or line within 60 days after the date that the  
17 motor vehicle dealer sends the written notification, then  
18 the manufacturer shall be deemed to have approved the  
19 addition of the make or line; ~~or~~

20 (9) to use or consider the performance of a motor  
21 vehicle dealer relating to the sale of the manufacturer's,  
22 distributor's, or wholesaler's vehicles or the motor  
23 vehicle dealer's ability to satisfy any minimum sales or  
24 market share quota or responsibility relating to the sale  
25 of the manufacturer's, distributor's, or wholesaler's new  
26 vehicles in determining:

1 (A) the motor vehicle dealer's eligibility to  
2 purchase program, certified, or other used motor  
3 vehicles from the manufacturer, distributor, or  
4 wholesaler;

5 (B) the volume, type, or model of program,  
6 certified, or other used motor vehicles that a motor  
7 vehicle dealer is eligible to purchase from the  
8 manufacturer, distributor, or wholesaler;

9 (C) the price of any program, certified, or other  
10 used motor vehicle that the dealer is eligible to  
11 purchase from the manufacturer, distributor, or  
12 wholesaler; or

13 (D) the availability or amount of any discount,  
14 credit, rebate, or sales incentive that the dealer is  
15 eligible to receive from the manufacturer,  
16 distributor, or wholesaler for the purchase of any  
17 program, certified, or other used motor vehicle  
18 offered for sale by the manufacturer, distributor, or  
19 wholesaler; ~~or~~

20 (10) to take or threaten to take any adverse action  
21 against a dealer pursuant to an export or sale-for-resale  
22 prohibition because the dealer sold or leased a vehicle to  
23 a customer who either exported the vehicle to a foreign  
24 country or resold the vehicle in violation of the  
25 prohibition, unless the export or sale-for-resale  
26 prohibition policy was provided to the dealer in writing

1 prior to the sale or lease, and the dealer knew of the  
2 customer's intent to export or resell the vehicle in  
3 violation of the prohibition at the time of the sale or  
4 lease. If the dealer causes the vehicle to be registered in  
5 this or any other state, and collects or causes to be  
6 collected any applicable sales or use tax to this State, a  
7 rebuttable presumption is established that the dealer did  
8 not have reason to know of the customer's intent to resell  
9 the vehicle;

10 (11) to coerce or require any dealer, whether by  
11 agreement, program, incentive provision, or otherwise, to  
12 construct improvements to its facilities or to install new  
13 signs or other franchiser image elements that replace or  
14 substantially alter those improvements, signs, or  
15 franchiser image elements completed within the preceding  
16 10 years that were required and approved by the  
17 manufacturer or one of its affiliates. If a manufacturer  
18 offers incentives or other payments to a consumer or  
19 dealer, paid on individual vehicle sales under a program  
20 offered after the effective date of this amendatory Act of  
21 the 100th General Assembly and available to more than one  
22 dealer in the State, that are premised, wholly or in part,  
23 on dealer facility improvements or installation of  
24 franchiser image elements required by and approved by the  
25 manufacturer and completed within 10 years preceding the  
26 offer, the dealer shall be deemed to be in compliance with

1 the program requirements pertaining to construction of  
2 facilities or installation of signs or other franchiser  
3 image elements that would replace or substantially alter  
4 those previously constructed or installed with that  
5 10-year period. This paragraph does not apply to a program  
6 that is in effect with more than one dealer in the State on  
7 the effective date of this amendatory Act of the 100th  
8 General Assembly, nor to any renewal of such a program, nor  
9 to a modification that is not a substantial modification of  
10 a material term or condition of such a program; or

11 (12) to require a dealer to purchase goods or services  
12 to make improvement to the dealer's facilities from a  
13 vendor selected, identified, or designated by a  
14 manufacturer or one of its affiliates by agreement,  
15 program, incentive provision, or otherwise without making  
16 available to the dealer the option to obtain the goods or  
17 services of substantially similar quality and overall  
18 design from a vendor chosen by the dealer and approved by  
19 the manufacturer; however, approval by the manufacturer  
20 shall not be unreasonably withheld, and the dealer's option  
21 to select a vendor shall not be available if the  
22 manufacturer provides substantial reimbursement for the  
23 goods or services offered. "Substantial reimbursement"  
24 means at least 65% of the cost, which shall not be greater  
25 than the cost of reasonably available similar goods and  
26 services in close proximity to the dealer's relevant market

1 area. If signs or other franchiser image or design elements  
2 or trade dress are to be leased to the dealer by a vendor  
3 selected, identified, or designated by the manufacturer,  
4 the dealer has the right to purchase the signs or other  
5 franchiser image or design elements or trade dress of  
6 substantially similar quality from a vendor selected by the  
7 dealer if the signs, images, design elements, or trade  
8 dress are approved by the manufacturer. Approval by the  
9 manufacturer shall not be unreasonably withheld. This  
10 paragraph shall not be construed to allow a dealer to  
11 impair or eliminate the intellectual property rights of the  
12 manufacturer, nor to permit a dealer to erect or maintain  
13 signs that do not conform to the manufacturer's  
14 intellectual property usage guidelines.

15 (e) It shall be deemed a violation for a manufacturer, a  
16 distributor, a wholesaler, a distributor branch or division or  
17 officer, agent or other representative thereof:

18 (1) to resort to or use any false or misleading  
19 advertisement in connection with his business as such  
20 manufacturer, distributor, wholesaler, distributor branch  
21 or division or officer, agent or other representative  
22 thereof;

23 (2) to offer to sell or lease, or to sell or lease, any  
24 new motor vehicle to any motor vehicle dealer at a lower  
25 actual price therefor than the actual price offered to any  
26 other motor vehicle dealer for the same model vehicle

1           similarly equipped or to utilize any device including, but  
2           not limited to, sales promotion plans or programs which  
3           result in such lesser actual price or fail to make  
4           available to any motor vehicle dealer any preferential  
5           pricing, incentive, rebate, finance rate, or low interest  
6           loan program offered to competing motor vehicle dealers in  
7           other contiguous states. However, the provisions of this  
8           paragraph shall not apply to sales to a motor vehicle  
9           dealer for resale to any unit of the United States  
10          Government, the State or any of its political subdivisions;

11           (3) to offer to sell or lease, or to sell or lease, any  
12          new motor vehicle to any person, except a wholesaler,  
13          distributor or manufacturer's employees at a lower actual  
14          price therefor than the actual price offered and charged to  
15          a motor vehicle dealer for the same model vehicle similarly  
16          equipped or to utilize any device which results in such  
17          lesser actual price. However, the provisions of this  
18          paragraph shall not apply to sales to a motor vehicle  
19          dealer for resale to any unit of the United States  
20          Government, the State or any of its political subdivisions;

21           (4) to prevent or attempt to prevent by contract or  
22          otherwise any motor vehicle dealer or franchisee from  
23          changing the executive management control of the motor  
24          vehicle dealer or franchisee unless the franchiser, having  
25          the burden of proof, proves that such change of executive  
26          management will result in executive management control by a

1 person or persons who are not of good moral character or  
2 who do not meet the franchiser's existing and, with  
3 consideration given to the volume of sales and service of  
4 the dealership, uniformly applied minimum business  
5 experience standards in the market area. However where the  
6 manufacturer rejects a proposed change in executive  
7 management control, the manufacturer shall give written  
8 notice of his reasons to the dealer within 60 days of  
9 notice to the manufacturer by the dealer of the proposed  
10 change. If the manufacturer does not send a letter to the  
11 franchisee by certified mail, return receipt requested,  
12 within 60 days from receipt by the manufacturer of the  
13 proposed change, then the change of the executive  
14 management control of the franchisee shall be deemed  
15 accepted as proposed by the franchisee, and the  
16 manufacturer shall give immediate effect to such change;

17 (5) to prevent or attempt to prevent by contract or  
18 otherwise any motor vehicle dealer from establishing or  
19 changing the capital structure of his dealership or the  
20 means by or through which he finances the operation  
21 thereof; provided the dealer meets any reasonable capital  
22 standards agreed to between the dealer and the  
23 manufacturer, distributor or wholesaler, who may require  
24 that the sources, method and manner by which the dealer  
25 finances or intends to finance its operation, equipment or  
26 facilities be fully disclosed;

1           (6) to refuse to give effect to or prevent or attempt  
2 to prevent by contract or otherwise any motor vehicle  
3 dealer or any officer, partner or stockholder of any motor  
4 vehicle dealer from selling or transferring any part of the  
5 interest of any of them to any other person or persons or  
6 party or parties unless such sale or transfer is to a  
7 transferee who would not otherwise qualify for a new motor  
8 vehicle dealers license under the ~~"The~~ Illinois Vehicle  
9 Code<sup>u</sup> or unless the franchiser, having the burden of proof,  
10 proves that such sale or transfer is to a person or party  
11 who is not of good moral character or does not meet the  
12 franchiser's existing and reasonable capital standards  
13 and, with consideration given to the volume of sales and  
14 service of the dealership, uniformly applied minimum  
15 business experience standards in the market area. However,  
16 nothing herein shall be construed to prevent a franchiser  
17 from implementing affirmative action programs providing  
18 business opportunities for minorities or from complying  
19 with applicable federal, State or local law:

20           (A) If the manufacturer intends to refuse to  
21 approve the sale or transfer of all or a part of the  
22 interest, then it shall, within 60 days from receipt of  
23 the completed application forms generally utilized by  
24 a manufacturer to conduct its review and a copy of all  
25 agreements regarding the proposed transfer, send a  
26 letter by certified mail, return receipt requested,



1           advising the franchisee of any refusal to approve the  
2           sale or transfer of all or part of the interest and  
3           shall state that the dealer only has 30 days from the  
4           receipt of the notice to file with the Motor Vehicle  
5           Review Board a written protest against the proposed  
6           action. The notice shall set forth specific criteria  
7           used to evaluate the prospective transferee and the  
8           grounds for refusing to approve the sale or transfer to  
9           that transferee. Within 30 days from the franchisee's  
10          receipt of the manufacturer's notice, the franchisee  
11          may file with the Board a written protest against the  
12          proposed action.

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

21                 The manufacturer shall have the burden of proof to  
22          establish that good cause exists to refuse to approve  
23          the sale or transfer to the transferee. The  
24          determination whether good cause exists to refuse to  
25          approve the sale or transfer shall be made by the Board  
26          under subdivisions (6) (B). The manufacturer shall not

1           refuse to approve the sale or transfer by a dealer or  
2           an officer, partner, or stockholder of a franchise or  
3           any part of the interest to any person or persons  
4           before the hearing process is concluded as prescribed  
5           by this Act, and thereafter if the Board determines  
6           that the manufacturer has failed to meet its burden of  
7           proof and that good cause does not exist to refuse to  
8           approve the sale or transfer to the transferee.

9           (B) Good cause to refuse to approve such sale or  
10          transfer under this Section is established when such  
11          sale or transfer is to a transferee who would not  
12          otherwise qualify for a new motor vehicle dealers  
13          license under the ~~"The Illinois Vehicle Code"~~ or such  
14          sale or transfer is to a person or party who is not of  
15          good moral character or does not meet the franchiser's  
16          existing and reasonable capital standards and, with  
17          consideration given to the volume of sales and service  
18          of the dealership, uniformly applied minimum business  
19          experience standards in the market area.

20          (7) to obtain money, goods, services, anything of  
21          value, or any other benefit from any other person with whom  
22          the motor vehicle dealer does business, on account of or in  
23          relation to the transactions between the dealer and the  
24          other person as compensation, except for services actually  
25          rendered, unless such benefit is promptly accounted for and  
26          transmitted to the motor vehicle dealer;

1           (8) to grant an additional franchise in the relevant  
2 market area of an existing franchise of the same line make  
3 or to relocate an existing motor vehicle dealership within  
4 or into a relevant market area of an existing franchise of  
5 the same line make. However, if the manufacturer wishes to  
6 grant such an additional franchise to an independent person  
7 in a bona fide relationship in which such person is  
8 prepared to make a significant investment subject to loss  
9 in such a dealership, or if the manufacturer wishes to  
10 relocate an existing motor vehicle dealership, then the  
11 manufacturer shall send a letter by certified mail, return  
12 receipt requested, to each existing dealer or dealers of  
13 the same line make whose relevant market area includes the  
14 proposed location of the additional or relocated franchise  
15 at least 60 days before the manufacturer grants an  
16 additional franchise or relocates an existing franchise of  
17 the same line make within or into the relevant market area  
18 of an existing franchisee of the same line make. Each  
19 notice shall set forth the specific grounds for the  
20 proposed grant of an additional or relocation of an  
21 existing franchise and shall state that the dealer has only  
22 30 days from the date of receipt of the notice to file with  
23 the Motor Vehicle Review Board a written protest against  
24 the proposed action. Unless the parties agree upon the  
25 grant or establishment of the additional or relocated  
26 franchise within 30 days from the date the notice was

1 received by the existing franchisee of the same line make  
2 or any person entitled to receive such notice, the  
3 franchisee or other person may file with the Board a  
4 written protest against the grant or establishment of the  
5 proposed additional or relocated franchise.

6 When a protest has been timely filed, the Board shall  
7 enter an order fixing a date (within 60 days of the date of  
8 the order), time, and place of a hearing on the protest,  
9 required under Sections 12 and 29 of this Act, and send by  
10 certified or registered mail, return receipt requested, a  
11 copy of the order to the manufacturer that filed the notice  
12 of intention to grant or establish the proposed additional  
13 or relocated franchise and to the protesting dealer or  
14 dealers of the same line make whose relevant market area  
15 includes the proposed location of the additional or  
16 relocated franchise.

17 When more than one protest is filed against the grant  
18 or establishment of the additional or relocated franchise  
19 of the same line make, the Board may consolidate the  
20 hearings to expedite disposition of the matter. The  
21 manufacturer shall have the burden of proof to establish  
22 that good cause exists to allow the grant or establishment  
23 of the additional or relocated franchise. The manufacturer  
24 may not grant or establish the additional franchise or  
25 relocate the existing franchise before the hearing process  
26 is concluded as prescribed by this Act, and thereafter if

1 the Board determines that the manufacturer has failed to  
2 meet its burden of proof and that good cause does not exist  
3 to allow the grant or establishment of the additional  
4 franchise or relocation of the existing franchise.

5 The determination whether good cause exists for  
6 allowing the grant or establishment of an additional  
7 franchise or relocated existing franchise, shall be made by  
8 the Board under subsection (c) of Section 12 of this Act.  
9 If the manufacturer seeks to enter into a contract,  
10 agreement or other arrangement with any person,  
11 establishing any additional motor vehicle dealership or  
12 other facility, limited to the sale of factory repurchase  
13 vehicles or late model vehicles, then the manufacturer  
14 shall follow the notice procedures set forth in this  
15 Section and the determination whether good cause exists for  
16 allowing the proposed agreement shall be made by the Board  
17 under subsection (c) of Section 12, with the manufacturer  
18 having the burden of proof.

19 A. (Blank).

20 B. For the purposes of this Section, appointment of  
21 a successor motor vehicle dealer at the same location  
22 as its predecessor, or within 2 miles of such location,  
23 or the relocation of an existing dealer or franchise  
24 within 2 miles of the relocating dealer's or  
25 franchisee's existing location, shall not be construed  
26 as a grant, establishment or the entering into of an

1 additional franchise or selling agreement, or a  
2 relocation of an existing franchise. The reopening of a  
3 motor vehicle dealership that has not been in operation  
4 for 18 months or more shall be deemed the grant of an  
5 additional franchise or selling agreement.

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

23 D. Nothing in this Section shall be construed to  
24 prevent a franchiser from implementing affirmative  
25 action programs providing business opportunities for  
26 minorities or from complying with applicable federal,

1 State or local law;

2 (9) to require a motor vehicle dealer to assent to a  
3 release, assignment, novation, waiver or estoppel which  
4 would relieve any person from liability imposed by this  
5 Act;

6 (10) to prevent or refuse to give effect to the  
7 succession to the ownership or management control of a  
8 dealership by any legatee under the will of a dealer or to  
9 an heir under the laws of descent and distribution of this  
10 State unless the franchisee has designated a successor to  
11 the ownership or management control under the succession  
12 provisions of the franchise. Unless the franchiser, having  
13 the burden of proof, proves that the successor is a person  
14 who is not of good moral character or does not meet the  
15 franchiser's existing and reasonable capital standards  
16 and, with consideration given to the volume of sales and  
17 service of the dealership, uniformly applied minimum  
18 business experience standards in the market area, any  
19 designated successor of a dealer or franchisee may succeed  
20 to the ownership or management control of a dealership  
21 under the existing franchise if:

22 (i) The designated successor gives the  
23 franchiser written notice by certified mail,  
24 return receipt requested, of his or her intention  
25 to succeed to the ownership of the dealer within 60  
26 days of the dealer's death or incapacity; and

1                   (ii) The designated successor agrees to be  
2                   bound by all the terms and conditions of the  
3                   existing franchise.

4                   Notwithstanding the foregoing, in the event the motor  
5                   vehicle dealer or franchisee and manufacturer have duly  
6                   executed an agreement concerning succession rights prior  
7                   to the dealer's death or incapacitation, the agreement  
8                   shall be observed.

9                   (A) If the franchiser intends to refuse to honor  
10                  the successor to the ownership of a deceased or  
11                  incapacitated dealer or franchisee under an existing  
12                  franchise agreement, the franchiser shall send a  
13                  letter by certified mail, return receipt requested, to  
14                  the designated successor within 60 days from receipt of  
15                  a proposal advising of its intent to refuse to honor  
16                  the succession and to discontinue the existing  
17                  franchise agreement and shall state that the  
18                  designated successor only has 30 days from the receipt  
19                  of the notice to file with the Motor Vehicle Review  
20                  Board a written protest against the proposed action.  
21                  The notice shall set forth the specific grounds for the  
22                  refusal to honor the succession and discontinue the  
23                  existing franchise agreement.

24                  If notice of refusal is not timely served upon the  
25                  designated successor, the franchise agreement shall  
26                  continue in effect subject to termination only as



1 otherwise permitted by paragraph (6) of subsection (d)  
2 of Section 4 of this Act.

3 Within 30 days from the date the notice was  
4 received by the designated successor or any other  
5 person entitled to notice, the designee or other person  
6 may file with the Board a written protest against the  
7 proposed action.

8 When a protest has been timely filed, the Board  
9 shall enter an order, fixing a date (within 60 days of  
10 the date of the order), time, and place of a hearing on  
11 the protest, required under Sections 12 and 29 of this  
12 Act, and send by certified mail, return receipt  
13 requested, a copy of the order to the franchiser that  
14 filed the notice of intention of the proposed action  
15 and to the protesting designee or such other person.

16 The manufacturer shall have the burden of proof to  
17 establish that good cause exists to refuse to honor the  
18 succession and discontinue the existing franchise  
19 agreement. The determination whether good cause exists  
20 to refuse to honor the succession shall be made by the  
21 Board under subdivision (B) of this paragraph (10). The  
22 manufacturer shall not refuse to honor the succession  
23 or discontinue the existing franchise agreement before  
24 the hearing process is concluded as prescribed by this  
25 Act, and thereafter if the Board determines that it has  
26 failed to meet its burden of proof and that good cause

1 does not exist to refuse to honor the succession and  
2 discontinue the existing franchise agreement.

3 (B) No manufacturer shall impose any conditions  
4 upon honoring the succession and continuing the  
5 existing franchise agreement with the designated  
6 successor other than that the franchisee has  
7 designated a successor to the ownership or management  
8 control under the succession provisions of the  
9 franchise, or that the designated successor is of good  
10 moral character or meets the reasonable capital  
11 standards and, with consideration given to the volume  
12 of sales and service of the dealership, uniformly  
13 applied minimum business experience standards in the  
14 market area;

15 (11) to prevent or refuse to approve a proposal to  
16 establish a successor franchise at a location previously  
17 approved by the franchiser when submitted with the  
18 voluntary termination by the existing franchisee unless  
19 the successor franchisee would not otherwise qualify for a  
20 new motor vehicle dealer's license under the Illinois  
21 Vehicle Code or unless the franchiser, having the burden of  
22 proof, proves that such proposed successor is not of good  
23 moral character or does not meet the franchiser's existing  
24 and reasonable capital standards and, with consideration  
25 given to the volume of sales and service of the dealership,  
26 uniformly applied minimum business experience standards in

1 the market area. However, when such a rejection of a  
2 proposal is made, the manufacturer shall give written  
3 notice of its reasons to the franchisee within 60 days of  
4 receipt by the manufacturer of the proposal. However,  
5 nothing herein shall be construed to prevent a franchiser  
6 from implementing affirmative action programs providing  
7 business opportunities for minorities, or from complying  
8 with applicable federal, State or local law;

9 (12) to prevent or refuse to grant a franchise to a  
10 person because such person owns, has investment in or  
11 participates in the management of or holds a franchise for  
12 the sale of another make or line of motor vehicles within 7  
13 miles of the proposed franchise location in a county having  
14 a population of more than 300,000 persons, or within 12  
15 miles of the proposed franchise location in a county having  
16 a population of less than 300,000 persons; ~~or~~

17 (13) to prevent or attempt to prevent any new motor  
18 vehicle dealer from establishing any additional motor  
19 vehicle dealership or other facility limited to the sale of  
20 factory repurchase vehicles or late model vehicles or  
21 otherwise offering for sale factory repurchase vehicles of  
22 the same line make at an existing franchise by failing to  
23 make available any contract, agreement or other  
24 arrangement which is made available or otherwise offered to  
25 any person; or.

26 (14) to exercise a right of first refusal or other

1 right to acquire a franchise from a dealer, unless the  
2 manufacturer:

3 (A) notifies the dealer and the proposed  
4 transferee in writing that it intends to exercise its  
5 right to acquire the franchise not later than 60 days  
6 after the manufacturer or distributor's receipt of a  
7 notice of the proposed transfer from the dealer or the  
8 proposed transferee and all information and documents  
9 reasonably and customarily required by the  
10 manufacturer supporting the proposed transfer. For the  
11 purpose of this paragraph, "proposed transferee" means  
12 the person to whom the franchise would have been  
13 transferred to, or was proposed to be transferred to,  
14 had the right of first refusal or other right to  
15 acquire the franchise not been exercised by the  
16 manufacturer or distributor;

17 (B) pays to the dealer the same or greater  
18 consideration as the dealer has contracted to receive  
19 in connection with the proposed transfer or sale of all  
20 or substantially all of the dealership assets, stock,  
21 or other ownership interest, including the purchase or  
22 lease of all real property, leasehold, or improvements  
23 related to the transfer or sale of the dealership. Upon  
24 exercise of the right of first refusal or such other  
25 right, the manufacturer or distributor shall have the  
26 right to assign the lease or to convey the real

1           property;

2           (C) assumes all of the duties, obligations, and  
3           liabilities contained in the agreements that were to be  
4           assumed by the proposed transferee and with respect to  
5           which the manufacturer or distributor exercised the  
6           right of first refusal or other right to acquire the  
7           franchise;

8           (D) reimburses the proposed transferee for all  
9           reasonable expenses incurred in evaluating,  
10           investigating, negotiating, and pursuing the  
11           acquisition of the dealership prior to the  
12           manufacturer or distributor's exercise of its right of  
13           first refusal or other right to acquire the dealership.  
14           For purposes of this paragraph, "reasonable expenses"  
15           includes the usual and customary legal and accounting  
16           fees charged for similar work, as well as expenses  
17           associated with the evaluation and investigation of  
18           any real property on which the dealership is operated.  
19           The proposed transferee shall submit an itemized list  
20           of its expenses to the manufacturer or distributor not  
21           later than 30 days after the manufacturer or  
22           distributor's exercise of the right of first refusal or  
23           other right to acquire the motor vehicle franchise. The  
24           manufacturer or distributor shall reimburse the  
25           proposed transferee for its expenses not later than 30  
26           days after receipt of the itemized list. A manufacturer

1 or distributor may request to be provided with the  
2 itemized list of expenses before exercising the  
3 manufacturer's right of first refusal;

4 (E) assumes the defense of the selling dealer for  
5 any claim by the proposed transferee arising from the  
6 exercise of the right of first refusal. The dealer  
7 shall not have any liability to any person as a result  
8 of a manufacturer's exercising its right of first  
9 refusal.

10 (f) It is deemed a violation for a manufacturer, a  
11 distributor, a wholesaler, a distributor branch or division, a  
12 factory branch or division, or a wholesale branch or division,  
13 or officer, agent, employee, broker, shareholder, except a  
14 shareholder of 1% or less of the outstanding shares of any  
15 class of securities of a manufacturer, distributor, or  
16 wholesaler which is a publicly traded corporation, or other  
17 representative, directly or indirectly, to own or operate a  
18 place of business as a motor vehicle dealer, motor vehicle  
19 franchisee, or motor vehicle financing affiliate, and it is a  
20 violation for a manufacturer to sell a vehicle directly to a  
21 retail customer other than through a franchised dealer, except  
22 that, this subsection shall not prohibit:

23 (1) the ownership or operation of a place of business  
24 by a manufacturer, distributor, or wholesaler for a period,  
25 not to exceed 18 months, during the transition from one  
26 motor vehicle franchisee to another;

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

14           (3) the ownership or operation of a place of business  
15 by a manufacturer that manufactures only diesel engines for  
16 installation in trucks having a gross vehicle weight rating  
17 of more than 16,000 pounds that are required to be  
18 registered under the Illinois Vehicle Code, provided that:

19           (A) the manufacturer does not otherwise  
20 manufacture, distribute, or sell motor vehicles as  
21 defined under Section 1-217 of the Illinois Vehicle  
22 Code;

23           (B) the manufacturer owned a place of business and  
24 it was in operation as of January 1, 2016;

25           (C) the manufacturer complies with all obligations  
26 owed to dealers that are not owned, operated, or

1 controlled by the manufacturer, including, but not  
2 limited to those obligations arising pursuant to  
3 Section 6;

4 (D) to further avoid any acts or practices, the  
5 effect of which may be to lessen or eliminate  
6 competition, the manufacturer provides to dealers on  
7 substantially equal terms access to all support for  
8 completing repairs, including, but not limited to,  
9 parts and assemblies, training, and technical service  
10 bulletins, and other information concerning repairs  
11 that the manufacturer provides to facilities that are  
12 owned, operated, or controlled by the manufacturer;  
13 and

14 (E) the manufacturer does not require that  
15 warranty repair work be performed by a  
16 manufacturer-owned repair facility and the  
17 manufacturer provides any dealer that has an agreement  
18 with the manufacturer to sell and perform warranty  
19 repairs on the manufacturer's engines the opportunity  
20 to perform warranty repairs on those engines,  
21 regardless of whether the dealer sold the truck into  
22 which the engine was installed.

23 (g) Notwithstanding the terms, provisions, or conditions  
24 of any agreement or waiver, it shall be deemed a violation for  
25 a manufacturer, a distributor, a wholesaler, a distributor  
26 branch or division, a factory branch or division, or a



1 wholesale branch or division, or officer, agent or other  
2 representative thereof, to directly or indirectly condition  
3 the awarding of a franchise to a prospective new motor vehicle  
4 dealer, the addition of a line make or franchise to an existing  
5 dealer, the renewal of a franchise of an existing dealer, the  
6 approval of the relocation of an existing dealer's facility, or  
7 the approval of the sale or transfer of the ownership of a  
8 franchise on the willingness of a dealer, proposed new dealer,  
9 or owner of an interest in the dealership facility to enter  
10 into a site control agreement or exclusive use agreement unless  
11 separate and reasonable consideration was offered and accepted  
12 for that agreement.

13 For purposes of this subsection (g), the terms "site  
14 control agreement" and "exclusive use agreement" include any  
15 agreement that has the effect of either (i) requiring that the  
16 dealer establish or maintain exclusive dealership facilities;  
17 or (ii) restricting the ability of the dealer, or the ability  
18 of the dealer's lessor in the event the dealership facility is  
19 being leased, to transfer, sell, lease, or change the use of  
20 the dealership premises, whether by sublease, lease,  
21 collateral pledge of lease, or other similar agreement. "Site  
22 control agreement" and "exclusive use agreement" also include a  
23 manufacturer restricting the ability of a dealer to transfer,  
24 sell, or lease the dealership premises by right of first  
25 refusal to purchase or lease, option to purchase, or option to  
26 lease if the transfer, sale, or lease of the dealership

1 premises is to a person who is an immediate family member of  
2 the dealer. For the purposes of this subsection (g), "immediate  
3 family member" means a spouse, parent, son, daughter,  
4 son-in-law, daughter-in-law, brother, and sister.

5 If a manufacturer exercises any right of first refusal to  
6 purchase or lease or option to purchase or lease with regard to  
7 a transfer, sale, or lease of the dealership premises to a  
8 person who is not an immediate family member of the dealer,  
9 then (1) within 60 days from the receipt of the completed  
10 application forms generally utilized by a manufacturer to  
11 conduct its review and a copy of all agreements regarding the  
12 proposed transfer, the manufacturer must notify the dealer of  
13 its intent to exercise the right of first refusal to purchase  
14 or lease or option to purchase or lease and (2) the exercise of  
15 the right of first refusal to purchase or lease or option to  
16 purchase or lease must result in the dealer receiving  
17 consideration, terms, and conditions that either are the same  
18 as or greater than that which they have contracted to receive  
19 in connection with the proposed transfer, sale, or lease of the  
20 dealership premises.

21 Any provision contained in any agreement entered into on or  
22 after November 25, 2009 (the effective date of Public Act  
23 96-824) ~~this amendatory Act of the 96th General Assembly~~ that  
24 is inconsistent with the provisions of this subsection (g)  
25 shall be voidable at the election of the affected dealer,  
26 prospective dealer, or owner of an interest in the dealership

1 facility.

2 (h) For purposes of this subsection:

3 "Successor manufacturer" means any motor vehicle  
4 manufacturer that, on or after January 1, 2009, acquires,  
5 succeeds to, or assumes any part of the business of another  
6 manufacturer, referred to as the "predecessor manufacturer",  
7 as the result of any of the following:

8 (i) A change in ownership, operation, or control of the  
9 predecessor manufacturer by sale or transfer of assets,  
10 corporate stock or other equity interest, assignment,  
11 merger, consolidation, combination, joint venture,  
12 redemption, court-approved sale, operation of law or  
13 otherwise.

14 (ii) The termination, suspension, or cessation of a  
15 part or all of the business operations of the predecessor  
16 manufacturer.

17 (iii) The discontinuance of the sale of the product  
18 line.

19 (iv) A change in distribution system by the predecessor  
20 manufacturer, whether through a change in distributor or  
21 the predecessor manufacturer's decision to cease  
22 conducting business through a distributor altogether.

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

26 (i) entered into a termination agreement or deferred

1 termination agreement with a predecessor or successor  
2 manufacturer related to such franchise; or

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

6 For a period of 3 years from: (i) the date that a successor  
7 manufacturer acquires, succeeds to, or assumes any part of the  
8 business of a predecessor manufacturer; (ii) the last day that  
9 a former franchisee is authorized to remain in business as a  
10 franchised dealer with respect to a particular franchise under  
11 a termination agreement or deferred termination agreement with  
12 a predecessor or successor manufacturer; (iii) the last day  
13 that a former franchisee that was cancelled, terminated,  
14 nonrenewed, noncontinued, rejected, nonassumed, or otherwise  
15 ended by a predecessor or successor manufacturer is authorized  
16 to remain in business as a franchised dealer with respect to a  
17 particular franchise; or (iv) November 25, 2009 (the effective  
18 date of Public Act 96-824) ~~this amendatory Act of the 96th~~  
19 ~~General Assembly~~, whichever is latest, it shall be unlawful for  
20 such successor manufacturer to enter into a same line make  
21 franchise with any person or to permit the relocation of any  
22 existing same line make franchise, for a line make of the  
23 predecessor manufacturer that would be located or relocated  
24 within the relevant market area of a former franchisee who  
25 owned or leased a dealership facility in that relevant market  
26 area without first offering the additional or relocated

1 franchise to the former franchisee, or the designated successor  
2 of such former franchisee in the event the former franchisee is  
3 deceased or a person with a disability, at no cost and without  
4 any requirements or restrictions other than those imposed  
5 generally on the manufacturer's other franchisees at that time,  
6 unless one of the following applies:

7 (1) As a result of the former franchisee's  
8 cancellation, termination, noncontinuance, or nonrenewal  
9 of the franchise, the predecessor manufacturer had  
10 consolidated the line make with another of its line makes  
11 for which the predecessor manufacturer had a franchisee  
12 with a then-existing dealership facility located within  
13 that relevant market area.

14 (2) The successor manufacturer has paid the former  
15 franchisee, or the designated successor of such former  
16 franchisee in the event the former franchisee is deceased  
17 or a person with a disability, the fair market value of the  
18 former franchisee's franchise on (i) the date the  
19 franchisor announces the action which results in the  
20 termination, cancellation, or nonrenewal; or (ii) the date  
21 the action which results in termination, cancellation, or  
22 nonrenewal first became general knowledge; or (iii) the day  
23 12 months prior to the date on which the notice of  
24 termination, cancellation, or nonrenewal is issued,  
25 whichever amount is higher. Payment is due within 90 days  
26 of the effective date of the termination, cancellation, or

1 nonrenewal. If the termination, cancellation, or  
2 nonrenewal is due to a manufacturer's change in  
3 distributors, the manufacturer may avoid paying fair  
4 market value to the dealer if the new distributor or the  
5 manufacturer offers the dealer a franchise agreement with  
6 terms acceptable to the dealer.

7 (3) The successor manufacturer proves that it would  
8 have had good cause to terminate the franchise agreement of  
9 the former franchisee, or the successor of the former  
10 franchisee under item (e)(10) in the event that the former  
11 franchisee is deceased or a person with a disability. The  
12 determination of whether the successor manufacturer would  
13 have had good cause to terminate the franchise agreement of  
14 the former franchisee, or the successor of the former  
15 franchisee, shall be made by the Board under subsection (d)  
16 of Section 12. A successor manufacturer that seeks to  
17 assert that it would have had good cause to terminate a  
18 former franchisee, or the successor of the former  
19 franchisee, must file a petition seeking a hearing on this  
20 issue before the Board and shall have the burden of proving  
21 that it would have had good cause to terminate the former  
22 franchisee or the successor of the former franchisee. No  
23 successor dealer, other than the former franchisee, may be  
24 appointed or franchised by the successor manufacturer  
25 within the relevant market area of the former franchisee  
26 until the Board has held a hearing and rendered a

1 determination on the issue of whether the successor  
2 manufacturer would have had good cause to terminate the  
3 former franchisee.

4 In the event that a successor manufacturer attempts to  
5 enter into a same line make franchise with any person or to  
6 permit the relocation of any existing line make franchise under  
7 this subsection (h) at a location that is within the relevant  
8 market area of 2 or more former franchisees, then the successor  
9 manufacturer may not offer it to any person other than one of  
10 those former franchisees unless the successor manufacturer can  
11 prove that at least one of the 3 exceptions in items (1), (2),  
12 and (3) of this subsection (h) applies to each of those former  
13 franchisees.

14 (Source: P.A. 99-143, eff. 7-27-15; 99-844, eff. 8-19-16;  
15 revised 10-27-16.)

16 (815 ILCS 710/12) (from Ch. 121 1/2, par. 762)

17 Sec. 12. Arbitration; administrative proceedings; civil  
18 actions; determining good cause.

19 (a) The franchiser and franchisee may agree to submit a  
20 dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11 to  
21 arbitration. Any such proceeding shall be conducted under the  
22 provisions of the Uniform Arbitration Act by a 3 member panel  
23 composed of one member appointed by the franchisee and one  
24 member appointed by the franchiser who together shall choose  
25 the third member.

1           An arbitration proceeding hereunder for a remedy under  
2 paragraph (6) of subsection (d) or paragraph (6), (8), (10) or  
3 (11) of subsection (e) of Section 4 of this Act shall be  
4 commenced by written notice to the franchiser by the objecting  
5 franchisee within 30 days from the date the dealer received  
6 notice to cancel, terminate, modify or not extend or renew an  
7 existing franchise or selling agreement or refusal to honor  
8 succession to ownership or refusal to honor a sale or transfer  
9 or to grant or enter into the additional franchise or selling  
10 agreement, or to relocate an existing motor vehicle dealer; or  
11 within 60 days of the date the franchisee received notice in  
12 writing by the franchiser of its determination under any  
13 provision of Section 4 (other than paragraph (6) of subsection  
14 (d) or paragraph (6), (8), (10) or (11) of subsection (e) of  
15 Section 4), 5, 6, 7, 9, 10.1, or 11 of this Act; however, if  
16 notice of the provision under which the determination has been  
17 made is not given by the franchiser, then the proceeding shall  
18 be commenced as provided by Section 14 of this Act.

19           The franchiser and the franchisee shall appoint their  
20 respective arbitrators and they shall select the third  
21 arbitrator within 14 days of receipt of such notice by the  
22 franchiser. The arbitrators shall commence hearings within 60  
23 days after all the arbitrators have been appointed and a  
24 decision shall be rendered within 30 days after completion of  
25 the hearing.

26           During the pendency of the arbitration, any party may apply



1 to a court of competent jurisdiction which shall have power to  
2 modify or stay the effective date of a proposed additional  
3 franchise or selling agreement, or the effective date of a  
4 proposed motor vehicle dealership relocation or the effective  
5 date of a cancellation, termination or modification or refusal  
6 to honor succession or refusal to allow a sale or transfer or  
7 extend the expiration date of a franchise or selling agreement  
8 pending a final determination of the issues raised in the  
9 arbitration hearing upon such terms as the court may determine.  
10 Any such modification or stay shall not be effective for more  
11 than 60 days unless extended by the court for good cause or  
12 unless the arbitration hearing is then in progress.

13 (b) If the franchiser and the franchisee have not agreed to  
14 submit a dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11  
15 of this Act to arbitration under subsection (a), then a  
16 proceeding before the Motor Vehicle Review Board as prescribed  
17 by subsection (c) or (d) of Section 12 and Section 29 of this  
18 Act for a remedy other than damages under paragraph (6) of  
19 subsection (d) or paragraph (6), (8), (10), or (11) of  
20 subsection (e) of Section 4 of this Act shall be commenced upon  
21 receipt by the Motor Vehicle Review Board of a timely notice of  
22 protest or within 60 days of the date the franchisee received  
23 notice in writing by the franchiser of its determination under  
24 any provision of those Sections other than paragraph (6) of  
25 subsection (d) or paragraph (6), (8), (10), or (11) of  
26 subsection (e) of Section 4 of this Act; however, if notice of

1 the provision under which the determination has been made is  
2 not given by the franchiser, then the proceeding shall be  
3 commenced as provided by Section 14 of this Act.

4 During the pendency of a proceeding under this Section, a  
5 party may apply to a court of competent jurisdiction that shall  
6 have power to modify or stay the effective date of a proposed  
7 additional franchise or selling agreement, or the effective  
8 date of a proposed motor vehicle dealership relocation, or the  
9 effective date of a cancellation, termination, or  
10 modification, or extend the expiration date of a franchise or  
11 selling agreement or refusal to honor succession to ownership  
12 or refusal to approve a sale or transfer pending a final  
13 determination of the issues raised in the hearing upon such  
14 terms as the court may determine. Any modification or stay  
15 shall not be effective for more than 60 days unless extended by  
16 the court for good cause or unless the hearing is then in  
17 progress.

18 (c) In proceedings under (a) or (b), when determining  
19 whether good cause has been established for granting such  
20 proposed additional franchise or selling agreement, or for  
21 relocating an existing motor vehicle dealership, the  
22 arbitrators or Board shall consider all relevant circumstances  
23 in accordance with subsection (v) of Section 2 of this Act,  
24 including but not limited to:

25 (1) whether the establishment of such additional  
26 franchise or the relocation of such motor vehicle

1 dealership is warranted by economic and marketing  
2 conditions including anticipated future changes;

3 (2) the retail sales and service business transacted by  
4 the objecting motor vehicle dealer or dealers and other  
5 motor vehicle dealers of the same line make with a place of  
6 business in the relevant market area to be served by the  
7 additional franchise or the relocated motor vehicle  
8 dealership during the 5 year period immediately preceding  
9 such notice as compared to the business available to them;

10 (3) the investment necessarily made and obligations  
11 incurred by the objecting motor vehicle dealer or dealers  
12 and other motor vehicle dealers of the same line make with  
13 a place of business in the relevant market area to be  
14 served by the additional franchise or the relocated motor  
15 vehicle dealership to perform their obligations under  
16 existing franchises or selling agreements; and, the  
17 manufacturer shall give reasonable credit for sales of  
18 factory repurchase vehicles purchased by the objecting  
19 motor vehicle dealer or dealers and other motor vehicle  
20 dealers of the same line make with the place of business in  
21 the relevant market area to be served by the additional  
22 franchise or the relocated motor vehicle dealership, or the  
23 additional motor vehicle dealership or other facility  
24 limited to the sale of factory repurchase or late model  
25 vehicles, at manufacturer authorized or sponsored auctions  
26 in determining performance of obligations under existing

1 franchises or selling agreements relating to total new  
2 vehicle sales;

3 (4) the permanency of the investment of the objecting  
4 motor vehicle dealer or dealers and other motor vehicle  
5 dealers of the same line make with a place of business in  
6 the relevant market area to be served by the additional  
7 franchise or the relocated motor vehicle dealership;

8 (5) whether it is beneficial or injurious to the public  
9 welfare for an additional franchise or relocated motor  
10 vehicle dealership to be established;

11 (6) whether the objecting motor vehicle dealer or  
12 dealers and other motor vehicle dealers of the same line  
13 make with a place of business in the relevant market area  
14 to be served by the additional franchisee or relocated  
15 motor vehicle dealership are providing adequate  
16 competition and convenient consumer care for the motor  
17 vehicles of the same line make owned or operated in the  
18 area to be served by the additional franchise or relocated  
19 motor vehicle dealership;

20 (7) whether the objecting motor vehicle dealer or  
21 dealers and other motor vehicle dealers of the same line  
22 make with a place of business in the relevant market area  
23 to be served by the additional franchisee or the relocated  
24 motor vehicle dealership have adequate motor vehicle sales  
25 and service facilities, equipment, vehicle parts and  
26 qualified personnel to reasonably provide for the needs of

1 the customer; provided, however, that good cause shall not  
2 be shown solely by a desire for further market penetration;

3 (8) whether the establishment of an additional  
4 franchise or the relocation of a motor vehicle dealership  
5 would be in the public interest;

6 (9) whether there has been a material breach by a motor  
7 vehicle dealer of the existing franchise agreement which  
8 creates a substantially detrimental effect upon the  
9 distribution of the franchiser's motor vehicles in the  
10 affected motor vehicle dealer's relevant market area or  
11 fraudulent claims for warranty work, insolvency or  
12 inability to pay debts as they mature;

13 (10) the effect of an additional franchise or relocated  
14 motor vehicle dealership upon the existing motor vehicle  
15 dealers of the same line make in the relevant market area  
16 to be served by the additional franchisee or relocated  
17 motor vehicle dealership; and

18 (11) whether the manufacturer has given reasonable  
19 credit to the objecting motor vehicle dealer or dealers and  
20 other motor vehicle dealers of the same line make with a  
21 place of business in the relevant market area to be served  
22 by the additional franchise or relocated motor vehicle  
23 dealership or additional motor vehicle dealership or other  
24 facility limited to the sale of factory repurchase or late  
25 model vehicles, for retail sales of factory repurchase  
26 vehicles purchased by the motor vehicle dealer or dealers

1 at manufacturer authorized or sponsored auctions.

2 (d) In proceedings under subsection (a) or (b), when  
3 determining whether good cause has been established for  
4 cancelling, terminating, refusing to extend or renew, or  
5 changing or modifying the obligations of the motor vehicle  
6 dealer as a condition to offering a renewal, replacement, or  
7 succeeding franchise or selling agreement, the arbitrators or  
8 Board shall consider all relevant circumstances in accordance  
9 with subsection (v) of Section 2 of this Act, including but not  
10 limited to:

11 (1) The amount of retail sales transacted by the  
12 franchisee during a 5-year period immediately before the  
13 date of the notice of proposed action as compared to the  
14 business available to the franchisee.

15 (2) The investment necessarily made and obligations  
16 incurred by the franchisee to perform its part of the  
17 franchise.

18 (3) The permanency of the franchisee's investment.

19 (4) Whether it is injurious to the public interest for  
20 the franchise to be cancelled or terminated or not extended  
21 or modified, or the business of the franchise disrupted.

22 (5) Whether the franchisee has adequate motor vehicle  
23 sales and service facilities, equipment, vehicle parts,  
24 and service personnel to reasonably provide for the need of  
25 the customers for the same line make of motor vehicles  
26 handled by the franchisee.

1           (6) Whether the franchisee fails to fulfill the  
2 warranty obligations of the manufacturer required to be  
3 performed by the franchisee.

4           (7) The extent and materiality of the franchisee's  
5 failure to comply with the terms of the franchise and the  
6 reasonableness and fairness of those terms.

7           (8) Whether the owners of the franchise had actual  
8 knowledge of the facts and circumstances upon which  
9 cancellation or termination, failure to extend or renew, or  
10 changing or modification of the obligations of the  
11 franchisee as a condition to offering a renewal,  
12 replacement, or succeeding franchise or selling agreement.

13           (9) The extent to which local market factors in the  
14 dealer's relevant market area impacted the dealers sales.  
15 For the purpose of this paragraph (9), "local market  
16 factors" includes, but is not limited to, the following:  
17 (i) the popularity of vehicle brand sold by the dealer as  
18 compared to the popularity of competing brands within the  
19 dealer's relevant market area; (ii) local demographics;  
20 (iii) the proximity of same line-make dealer; (iv) the  
21 proximity of motor vehicle manufacturers to the dealer's  
22 market; and (v) distance and drive time for customers in  
23 the dealer's market area to the dealership impacted the  
24 dealer's sales.

25           (e) If the franchiser and the franchisee have not agreed to  
26 submit a dispute to arbitration, and the dispute did not arise

1 under paragraph (6) of subsection (d) or paragraph (6), (8),  
2 (10), or (11) of subsection (e) of Section 4 of this Act, then  
3 a proceeding for a remedy other than damages may be commenced  
4 by the objecting franchisee in the circuit court of the county  
5 in which the objecting franchisee has its principal place of  
6 business, within 60 days of the date the franchisee received  
7 notice in writing by the franchiser of its determination under  
8 any provision of this Act other than paragraph (6) of  
9 subsection (d) or paragraph (6), (8), (10), or (11) of  
10 subsection (e) of Section 4 of this Act; however, if notice of  
11 the provision under which the determination has been made is  
12 not given by the franchiser, then the proceeding shall be  
13 commenced as provided by Section 14 of this Act.

14 (f) The changes to this Section made by this amendatory Act  
15 of the 92nd General Assembly (i) apply only to causes of action  
16 accruing on or after its effective date and (ii) are intended  
17 to provide only an additional venue for dispute resolution  
18 without changing any substantive rights under this Act.

19 (Source: P.A. 92-272, eff. 1-1-02.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.