

# SB2967



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB2967

Introduced 2/14/2018, by Sen. Terry Link

#### SYNOPSIS AS INTRODUCED:

815 ILCS 505/2VVV new

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that it is an unlawful practice to advertise or offer free prizes, gifts, or incentives in connection with the sale of motor vehicles except under specified conditions. Prohibits the advertisement of a warranty as being free of charge. Sets forth conditions under which a warranty may be offered. Terminates the operation of certain administrative rules relating to gifts and free offers in connection with the sale of a vehicle.

LRB100 17538 JLS 35784 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Consumer Fraud and Deceptive Business  
5 Practices Act is amended by adding Section 2VVV as follows:

6 (815 ILCS 505/2VVV new)

7 Sec. 2VVV. Gifts and free offers by automobile dealers.

8 (a) In this Section:

9 "Dealer" and "used car dealer" have the meanings ascribed  
10 to those terms in the Illinois Vehicle Code.

11 "Clear and conspicuous" (including the term "clearly and  
12 conspicuously") means that the statement, representation, or  
13 term being conveyed is: in close proximity to the statement,  
14 representation, or term it clarifies, modifies, explains, or to  
15 which it otherwise relates; readily noticeable; reasonably  
16 understandable by the person to whom it is directed; and not  
17 contradictory to any terms it purports to clarify, modify, or  
18 explain. A statement, representation, or term is not clear and  
19 conspicuous unless:

20 (1) For printed, written, typed, or graphic  
21 advertisements, it:

22 (A) employs abbreviations only if they are  
23 commonly understood by the public (such as AC, AM/FM,

1 AUTO, AIR, 2DR, CYL, and MSRP) or approved by federal  
2 or State law (including terms allowed by the federal  
3 Truth in Lending Act or the Consumer Leasing Act of  
4 1976 such as APR) and does not employ abbreviations  
5 that are not commonly understood (such as WAC and PEG);  
6 and

7 (B) it is of sufficient prominence in terms of  
8 print, size, and color contrast, as compared with the  
9 remainder of the advertisement, so as to be readily  
10 noticeable to the person to whom it is directed. Any  
11 type size that is 10-point type or larger is deemed  
12 readily noticeable.

13 (2) For radio advertisements and the audio portion of  
14 television advertisements or advertisements in any other  
15 audio-visual medium:

16 (A) it is at a decibel level equal to the highest  
17 decibel level used in the advertisement; and

18 (B) it is at a speed equal to or slower than any  
19 other statement, representation, or term contained in  
20 the advertisement.

21 (3) For required superimposed written copy ("super")  
22 in a television advertisement or advertisements in any  
23 other audio-visual medium:

24 (A) the minimum height of supers are:

25 (i) capital and lower case letters: 24 video  
26 scanlines;

1                   (ii) capital letters only: 18 video scanlines;  
2                   (B) it appears on the screen for a duration  
3                   sufficient to allow a viewer to have a reasonable  
4                   opportunity to read and understand the statement,  
5                   representation, or term.

6                   There is a rebuttable presumption that the super is  
7                   sufficient if the super meets the following on-screen minimum  
8                   display time:

9                   (1) 3 seconds for the first line of text; and

10                   (2) one second for each additional line.

11                   "Material terms and conditions" means all terms and  
12                   conditions relating to the offer so as to leave no reasonable  
13                   probability that the offering might be misunderstood.

14                   "Material terms and conditions" includes, without limitation,  
15                   those mandated by federal or State law and terms without which  
16                   the advertisement would be false or misleading.

17                   "Service contract" has the meaning ascribed to that term in  
18                   the Service Contract Act.

19                   (b) It is an unlawful practice within the meaning of this  
20                   Act to advertise or offer free prizes, gifts, or other  
21                   incentives in connection with the sale or lease of a vehicle  
22                   when the vehicle is sold or leased at a price arrived at  
23                   through bargaining or negotiation, unless the dealer meets the  
24                   requirements of subsection (c) of this Section.

25                   (c) A free prize, gift, or other incentive may be  
26                   advertised or offered in connection with the sale or lease of a

1 vehicle if:

2 (1) the free prize, gift, or other incentive is offered  
3 through a manufacturer's program or a manufacturer's  
4 authorized and approved dealer advertising association  
5 without any participation by the dealer, excluding dues or  
6 assessments that are required to participate in the  
7 advertising association, and the identity of this program  
8 or association is clearly and conspicuously disclosed; and

9 (2) all material terms and conditions relating to the  
10 offer are clearly and conspicuously disclosed at the outset  
11 of the offer.

12 (d) Nothing in this Section prohibits any dealer from  
13 including a warranty with the purchase or lease of a vehicle as  
14 long as the following conditions are met:

15 (1) the warranty is not advertised as free using the  
16 word "free", or words of similar import;

17 (2) the warranty program offered by the dealer is not a  
18 service contract;

19 (3) the dealer is ultimately financially responsible  
20 for any and all covered claims;

21 (4) the dealer clearly and conspicuously discloses to  
22 consumers all material terms and conditions of the warranty  
23 program.

24 A dealer may only offer under this subsection a warranty  
25 that covers the mechanical components of a vehicle. Under no  
26 circumstances may a dealer offer a warranty under this

1 subsection that covers tires, oil changes, other routine  
2 maintenance, fabric protection, paint protection, road side  
3 assistance, dent and ding repair, or any other similar products  
4 or services.

5 A dealer may contract with a third party to establish,  
6 administer, or service the warranty program. If the dealer  
7 elects to contract with a third party, the dealer must  
8 undertake the following:

9 (1) the dealer shall establish the claim procedure  
10 process including any applicable restrictions or  
11 requirements associated with the warranty;

12 (2) the dealer shall oversee the third party;

13 (3) the dealer shall make all final decisions on claims  
14 and claim eligibility; and

15 (4) in the event of insolvency of the third party, the  
16 dealer remains financially responsible to administer,  
17 service, and pay any claims for the covered warranty  
18 period.

19 A contractual liability insurance policy may be purchased  
20 to cover the obligations of the warranty program. If the dealer  
21 elects to purchase liability insurance to cover the obligations  
22 of a warranty program, the dealer must undertake the following:

23 (1) the dealer shall establish the claim procedure  
24 process, including any applicable restrictions or  
25 requirements associated with the warranty;

26 (2) the dealer shall make all final decisions on claims

1 and claim eligibility;

2 (3) the insurance policy shall have a minimum rating of

3 A-minus; and

4 (4) in the event of insolvency of the insurance

5 company, the dealer remains financially responsible to

6 administer and pay any claims for the covered warranty

7 period.

8 (e) On and after the effective date of this amendatory Act

9 of the 100th General Assembly, Section 475.590 of Title 14 of

10 the Illinois Administrative Code is inoperative.