



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1760

Introduced 2/15/2019, by Sen. Steve Stadelman

SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 105/5.891 new

35 ILCS 120/6

625 ILCS 5/5-104.2

815 ILCS 380/Act rep.

from Ch. 120, par. 445

Creates the New Vehicle Buyer Protection Act of 2019. Provides that if a manufacturer is unable to service or repair a new motor vehicle to conform to the applicable written warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle or make restitution to the buyer. Provides that it shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle: (1) the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven after 2 or more repairs; (2) the same nonconformity has been subject to repair 4 or more times; or (3) the vehicle is out of service by reason of repair for more than 30 calendar days since delivery of the vehicle to the buyer. Requires a buyer to initiate a qualified third-party dispute resolution process, if available, before asserting the presumption that a reasonable number of attempts have been made to repair the nonconformity. Prohibits a person from selling a motor vehicle without first disclosing to the prospective buyer that the vehicle had a nonconformity and the nonconformity was corrected. Contains provisions concerning a "Lemon Law Buyback" decal; a warranty buyback notice; remedies; a manufacturer's fee for each vehicle sold; sales and use tax reimbursements; and other matters. Amends the Retailers' Occupation Tax Act and the Illinois Vehicle Code. Changes references to "New Vehicle Buyer Protection Act" to "New Vehicle Buyer Protection Act of 2019". Amends the State Finance Act. Creates the Motor Vehicle Dispute Resolution Certification Fund. Repeals the New Vehicle Buyer Protection Act.

LRB101 10412 JLS 55518 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 1. Short title. This Act may be cited as the New
5 Vehicle Buyer Protection Act of 2019.

6 Section 3. Definitions. As used in this Act:

7 "Buyer" or "retail buyer" means any individual or entity
8 who buys a new motor vehicle from a person, including a
9 partnership, limited liability company, corporation,
10 association, or any other legal entity, engaged in the business
11 of manufacturing, distributing, or selling vehicles at retail.

12 "Distributor" means any individual, partnership,
13 corporation, association, or other legal relationship that
14 stands between the manufacturer and the retail seller in
15 purchases, consignments, or contracts for sale of motor
16 vehicles.

17 "Lease" means any contract for the lease or bailment for
18 the use of a motor vehicle by an individual, for a term
19 exceeding 4 months, primarily for personal, family, or
20 household purposes, whether or not it is agreed that the lessee
21 bears the risk of the vehicles' depreciation.

22 "Lessee" means an individual who leases a motor vehicle
23 under a lease.

1 "Manufacturer" means any individual, partnership,
2 corporation, association, or other legal relationship that
3 manufactures, assembles, or produces motor vehicles.

4 "Motor home" means a vehicular unit built on, or
5 permanently attached to, a self-propelled motor vehicle
6 chassis, chassis cab, or van, which becomes an integral part of
7 the completed vehicle, designed for human habitation for
8 recreational or emergency occupancy.

9 "New motor vehicle" means a new motor vehicle that is
10 bought or used primarily for personal, family, or household
11 purposes. "New motor vehicle" also means a new motor vehicle
12 with a gross vehicle weight under 10,000 pounds that is bought
13 or used primarily for business purposes by a person, including
14 a partnership, limited liability company, corporation,
15 association, or any other legal entity, to which not more than
16 5 motor vehicles are registered in this State. "New motor
17 vehicle" includes the chassis, cab, and that portion of a motor
18 home devoted to its propulsion, but does not include any
19 portion designed, used, or maintained primarily for human
20 habitation, a dealer-owned vehicle, and a "demonstrator" or
21 other motor vehicle sold with a manufacturer's new car
22 warranty, but does not include a motorcycle or a motor vehicle
23 which is not registered under the Illinois Vehicle Code because
24 it is to be operated or used exclusively off the highways. A
25 demonstrator is a vehicle assigned by a dealer for the purpose
26 of demonstrating qualities and characteristics common to

1 vehicles of the same or similar model and type.

2 "Nonconformity" means a nonconformity which substantially
3 impairs the use, value, or safety of the new motor vehicle to
4 the buyer or lessee.

5 "Retail seller" or "retailer" means any individual,
6 partnership, corporation, association, or other legal
7 relationship that engages in the business of selling or leasing
8 motor vehicles to retail buyers.

9 "Service contract" means a contract in writing to perform,
10 over a fixed period of time or for a specified duration,
11 services relating to the maintenance or repair of a motor
12 vehicle, except that this term does not include a policy of
13 automobile insurance as defined in Section 143.13 of the
14 Illinois Insurance Code.

15 "Supplier" means any person engaged in the business of
16 making a motor home or new motor vehicle directly or indirectly
17 available to a buyer.

18 "Written warranty" means any undertaking in writing in
19 connection with the sale by a supplier of a consumer product to
20 refund, repair, replace, or take other remedial action with
21 respect to the product if the product fails to meet the
22 specifications set forth in the undertaking.

23 Section 5. Failure to service or repair. If a manufacturer
24 or its representative in this State is unable to service or
25 repair a new motor vehicle or motor home to conform to the

1 applicable written warranties after a reasonable number of
2 attempts, the manufacturer shall either promptly replace the
3 new motor vehicle or motor home in accordance with paragraph
4 (1) or promptly make restitution to the buyer in accordance
5 with paragraph (2). However, the buyer shall be free to elect
6 restitution in lieu of replacement, and in no event shall the
7 buyer be required by the manufacturer to accept a replacement
8 vehicle.

9 (1) In the case of replacement, the manufacturer shall
10 replace the buyer's vehicle with a new motor vehicle or
11 motor home substantially identical to the new motor vehicle
12 or motor home replaced. The replacement vehicle shall be
13 accompanied by all written and implied warranties that
14 normally accompany new motor vehicles or motor homes of
15 that specific kind. The manufacturer also shall pay for, or
16 to, the buyer the amount of any sales or use tax, license
17 fees, registration fees, and other official fees which the
18 buyer is obligated to pay in connection with the
19 replacement, plus any incidental damages to which the buyer
20 is entitled under Section 30, including, but not limited
21 to, reasonable repair, towing, and rental car costs
22 actually incurred by the buyer.

23 (2) In the case of restitution, the manufacturer shall
24 make restitution in an amount equal to the actual price
25 paid or payable by the buyer, including any charges for
26 transportation and manufacturer-installed options, but

1 excluding non-manufacturer items installed by a dealer or
2 the buyer, and including any collateral charges such as
3 sales or use tax, license fees, registration fees, finance
4 interest charges, and other official fees, plus any
5 incidental damages to which the buyer is entitled under
6 Section 30, including, but not limited to, reasonable
7 repair, towing, and rental car costs actually incurred by
8 the buyer.

9 (3) When the manufacturer replaces the new motor
10 vehicle or motor home pursuant to paragraph (1), the buyer
11 shall only be liable to pay the manufacturer an amount
12 directly attributable to use by the buyer of the replaced
13 vehicle prior to the time the buyer first delivered the
14 vehicle to the manufacturer or distributor, or its
15 authorized service and repair facility for correction of
16 the problem that gave rise to the nonconformity. When
17 restitution is made pursuant to paragraph (2), the amount
18 to be paid by the manufacturer to the buyer may be reduced
19 by the manufacturer by that amount directly attributable to
20 use by the buyer prior to the time the buyer first
21 delivered the vehicle to the manufacturer or distributor,
22 or its authorized service and repair facility for
23 correction of the problem that gave rise to the
24 nonconformity. The amount directly attributable to use by
25 the buyer shall be determined by multiplying the actual
26 price of the new motor vehicle or motor home paid or

1 payable by the buyer, including any charges for
2 transportation and manufacturer-installed options, by a
3 fraction having as its denominator 120,000 and having as
4 its numerator the number of miles traveled by the new motor
5 vehicle or motor home prior to the time the buyer first
6 delivered the new motor vehicle or motor home to the
7 manufacturer or distributor, or its authorized service and
8 repair facility for correction of the problem that gave
9 rise to the nonconformity. Nothing in this paragraph shall
10 in any way limit the rights or remedies available to the
11 buyer under any other law.

12 (4) A buyer of a new motor vehicle or motor home shall
13 also include a lessee of a new motor vehicle or motor home.

14 Section 10. Nonconformity.

15 (a) It shall be presumed that a reasonable number of
16 attempts have been made to conform a new motor vehicle or motor
17 home to the applicable written warranties if, within 18 months
18 from delivery to the buyer or 18,000 miles on the odometer of
19 the vehicle, whichever occurs first, one or more of the
20 following occurs:

21 (1) The same nonconformity results in a condition that
22 is likely to cause death or serious bodily injury if the
23 new motor vehicle or motor home is driven and the
24 nonconformity has been subject to repair 2 or more times by
25 the manufacturer or its agents, and the buyer or lessee has

1 at least once directly notified the manufacturer of the
2 need for the repair of the nonconformity.

3 (2) The same nonconformity has been subject to repair 4
4 or more times by the manufacturer or its agents and the
5 buyer has at least once directly notified the manufacturer
6 of the need for the repair of the nonconformity.

7 (3) The vehicle is out of service by reason of repair
8 of nonconformities by the manufacturer or its agents for a
9 cumulative total of more than 30 calendar days since
10 delivery of the new motor vehicle or motor home to the
11 buyer. The 30-day limit shall be extended only if repairs
12 cannot be performed due to conditions beyond the control of
13 the manufacturer or its agents. The buyer shall be required
14 to directly notify the manufacturer pursuant to paragraphs
15 (1) and (2) only if the manufacturer has clearly and
16 conspicuously disclosed to the buyer, with the warranty or
17 the owner's manual, the provisions of this Section and that
18 of Section 5, including the requirement that the buyer must
19 notify the manufacturer directly pursuant to paragraphs
20 (1) and (2). The notification, if required, shall be sent
21 to the address, if any, specified clearly and conspicuously
22 by the manufacturer in the written warranty or owner's
23 manual. This presumption shall be a rebuttable presumption
24 affecting the burden of proof, and it may be asserted by
25 the buyer in any civil action, including an action in small
26 claims court, or other formal or informal proceeding.

1 (b) If a qualified third-party dispute resolution process
2 exists, and the buyer receives timely notification in writing
3 of the availability of that qualified third-party dispute
4 resolution process with a description of its operation and
5 effect, the presumption in subsection (a) may not be asserted
6 by the buyer until after the buyer has initially resorted to
7 the qualified third-party dispute resolution process as
8 required in subsection (c). Notification of the availability of
9 the qualified third-party dispute resolution process is not
10 timely if the buyer suffers any prejudice resulting from any
11 delay in giving the notification. If a qualified third-party
12 dispute resolution process does not exist, or if the buyer is
13 dissatisfied with that third-party decision, or if the
14 manufacturer or its agent neglects to promptly fulfill the
15 terms of the qualified third-party dispute resolution process
16 decision after the decision is accepted by the buyer, the buyer
17 may assert the presumption provided in subsection (a) in an
18 action to enforce the buyer's rights under Section 5. The
19 findings and decision of a qualified third-party dispute
20 resolution process shall be admissible in evidence in the
21 action without further foundation. Any period of limitation of
22 actions under any federal or State laws with respect to any
23 person shall be extended for a period equal to the number of
24 days between the date a complaint is filed with a third-party
25 dispute resolution process and the date of its decision or the
26 date before which the manufacturer or its agent is required by

1 the decision to fulfill its terms if the decision is accepted
2 by the buyer, whichever occurs later.

3 (c) A qualified third-party dispute resolution process
4 shall be one that does all of the following:

5 (1) Complies with the minimum requirements of the
6 Federal Trade Commission for informal dispute settlement
7 procedures as set forth in Part 703 of Title 16 of the Code
8 of Federal Regulations, as those regulations read on
9 January 1, 1987.

10 (2) Renders decisions which are binding on the
11 manufacturer if the buyer elects to accept the decision.

12 (3) Prescribes a reasonable time, not to exceed 30 days
13 after the decision is accepted by the buyer, within which
14 the manufacturer or its agent must fulfill the terms of its
15 decisions.

16 (4) Provides arbitrators who are assigned to decide
17 disputes with copies of, and instruction in, the provisions
18 of the Federal Trade Commission's regulations in Part 703
19 of Title 16 of the Code of Federal Regulations as those
20 regulations read on January 1, 1987, Article 2 of the
21 Uniform Commercial Code, and this Act.

22 (5) Requires the manufacturer, when the process
23 orders, under the terms of this Act, either that the
24 nonconforming new motor vehicle or motor home be replaced
25 if the buyer consents to this remedy or that restitution be
26 made to the buyer, to replace the new motor vehicle or

1 motor home or make restitution in accordance with Section
2 5.

3 (6) Provides, at the request of the arbitrator or a
4 majority of the arbitration panel, for an inspection and
5 written report on the condition of a nonconforming new
6 motor vehicle, or motor home, at no cost to the buyer, by
7 an automobile expert who is independent of the
8 manufacturer.

9 (7) Takes into account, in rendering decisions, all
10 legal and equitable factors, including, but not limited to,
11 the written warranty, the rights and remedies conferred in
12 regulations of the Federal Trade Commission contained in
13 Part 703 of Title 16 of the Code of Federal Regulations as
14 those regulations read on January 1, 1987, Article 2 of the
15 Uniform Commercial Code, this Act, and any other equitable
16 considerations appropriate in the circumstances. Nothing
17 in this Act requires that, to be certified as a qualified
18 third-party dispute resolution process pursuant to this
19 Section, decisions of the process must consider or provide
20 remedies in the form of awards of punitive damages or
21 multiple damages, under subsection (c) of Section 30, or of
22 attorney's fees under subsection (d) of Section 30, or of
23 consequential damages other than as provided in
24 subsections (a) and (b) of Section 30, including, but not
25 limited to, reasonable repair, towing, and rental car costs
26 actually incurred by the buyer.

1 (8) Requires that no arbitrator deciding a dispute may
2 be a party to the dispute and that no other person,
3 including an employee, agent, or dealer for the
4 manufacturer, may be allowed to participate substantively
5 in the merits of any dispute with the arbitrator unless the
6 buyer is allowed to participate as well. Nothing in this
7 subsection prohibits any member of an arbitration from
8 deciding a dispute.

9 (9) Obtains and maintains certification by the
10 Attorney General as provided in Section 35.

11 (d) (1) Except as provided in paragraph (2), no person
12 shall sell, either at wholesale or retail, lease, or transfer a
13 new motor vehicle or motor home transferred by a buyer or
14 lessee to a manufacturer pursuant to Section 5 or a similar
15 statute of any other state, unless the nature of the
16 nonconformity experienced by the original buyer or lessee is
17 clearly and conspicuously disclosed to the prospective buyer,
18 lessee, or transferee, the nonconformity is corrected, and the
19 manufacturer warrants to the new buyer, lessee, or transferee
20 in writing for a period of one year that the new motor vehicle
21 or motor home is free of that nonconformity.

22 (2) Except for the requirement that the nature of the
23 nonconformity be disclosed to the transferee, paragraph (1)
24 does not apply to the transfer of a new motor vehicle or motor
25 home to an educational institution if the purpose of the
26 transfer is to make the new motor vehicle or motor home

1 available for use in automotive repair courses.

2 Section 15. Automotive consumer notification.

3 (a) The General Assembly finds and declares all of the
4 following:

5 (1) That the expansion of state warranty laws covering
6 new and used motor vehicles and motor homes has given
7 important and valuable protection to consumers.

8 (2) That, in states without this valuable warranty
9 protection, used and new motor vehicles and motor homes are
10 being resold in the marketplace without notice to the
11 subsequent purchaser.

12 (3) That other states have addressed this problem by
13 requiring notices on the title of new motor vehicles and
14 motor homes or other notice procedures to warn consumers
15 that the new motor vehicles or motor homes were repurchased
16 by a dealer or manufacturer because the new motor vehicle
17 or motor home could not be repaired in a reasonable length
18 of time or a reasonable number of repair attempts or the
19 dealer or manufacturer was not willing to repair the new
20 motor vehicle or motor home.

21 (4) That these notices serve the interests of consumers
22 who have a right to information relevant to their buying
23 decisions.

24 (5) That the disappearance of these notices upon the
25 transfer of title from another state to this State

1 encourages the transport of "lemons" to this State for sale
2 to the drivers of this State.

3 (b) As used in this Section, "dealer" means any person
4 engaged in the business of selling, offering for sale, or
5 negotiating the retail sale of, a used motor vehicle or motor
6 home or selling new motor vehicles or motor homes as a broker
7 or agent for another, including the officers, agents, and
8 employees of the person and any combination or association of
9 dealers.

10 (c) Any manufacturer who reacquires or assists a dealer or
11 lienholder to reacquire a new motor vehicle or motor home
12 registered in this State, any other state, or a federally
13 administered district shall, prior to any sale, lease, or
14 transfer of the new motor vehicle or motor home in this State,
15 or prior to exporting the new motor vehicle or motor home to
16 another state for sale, lease, or transfer if the new motor
17 vehicle or motor home was registered in this State and
18 reacquired pursuant to Section 5, cause the new motor vehicle
19 or motor home to be retitled in the name of the manufacturer,
20 request the Secretary of State to inscribe the manufacturer's
21 certificate of title with the notation "Lemon Law Buyback", and
22 affix a decal to the new motor vehicle or motor home in
23 accordance with Section 25 if the manufacturer knew or should
24 have known that the new motor vehicle or motor home is required
25 by law to be replaced, accepted for restitution due to the
26 failure of the manufacturer to conform the new motor vehicle or

1 motor home to applicable written warranties pursuant to Section
2 5, or accepted for restitution by the manufacturer due to the
3 failure of the manufacturer to conform the new motor vehicle or
4 motor home to written warranties required by any other
5 applicable law of the State, any other state, or federal law.

6 (d) Any manufacturer who reacquires or assists a dealer or
7 lienholder to reacquire a new motor vehicle or motor home in
8 response to a request by the buyer or lessee that the new motor
9 vehicle or motor home be either replaced or accepted for
10 restitution because the new motor vehicle or motor home did not
11 conform to written warranties shall, prior to the sale, lease,
12 or other transfer of the new motor vehicle or motor home,
13 execute and deliver to the subsequent transferee a notice and
14 obtain the transferee's written acknowledgment of a notice, as
15 prescribed by Section 20.

16 (e) Any person, including any dealer, who acquires a new
17 motor vehicle or motor home for resale and knows or should have
18 known that the new motor vehicle or motor home was reacquired
19 by the manufacturer of the new motor vehicle or motor home in
20 response to a request by the last retail owner or lessee of the
21 new motor vehicle or motor home that it be replaced or accepted
22 for restitution because the new motor vehicle or motor home did
23 not conform to written warranties shall, prior to the sale,
24 lease, or other transfer, execute and deliver to the subsequent
25 transferee a notice and obtain the transferee's written
26 acknowledgment of a notice, as prescribed by Section 20.

1 (f) Any person, including any manufacturer or dealer, who
2 sells, leases, or transfers ownership of a new motor vehicle or
3 motor home when the new motor vehicle's or motor home's
4 certificate of title is inscribed with the notation "Lemon Law
5 Buyback" shall, prior to the sale, lease, or ownership transfer
6 of the new motor vehicle or motor home, provide the transferee
7 with a disclosure statement signed by the transferee that
8 states: "THIS NEW MOTOR VEHICLE OR MOTOR HOME WAS REPURCHASED
9 BY ITS MANUFACTURER DUE TO A DEFECT IN THE NEW MOTOR VEHICLE OR
10 MOTOR HOME VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE
11 TITLE TO THIS NEW MOTOR VEHICLE OR MOTOR HOME HAS BEEN
12 PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK"."

13 (g) The disclosure requirements in subsections (d), (e),
14 and (f) are cumulative with all other consumer notice
15 requirements and do not relieve any person, including any
16 dealer or manufacturer, from complying with any other
17 applicable law, including any requirement of subsection (d) of
18 Section 10.

19 Section 20. Warranty buyback notice.

20 (a) The notice required in subsections (d) and (e) of
21 Section 15 shall be prepared by the manufacturer of the
22 reacquired new motor vehicle a motor home and shall disclose
23 all of the following:

24 (1) Year, make, model, and vehicle identification
25 number of the new motor vehicle or motor home.

1 (2) Whether the title to the new motor vehicle or motor
2 home has been inscribed with the notation "Lemon Law
3 Buyback".

4 (3) The nature of each nonconformity reported by the
5 original buyer or lessee of the new motor vehicle or motor
6 home.

7 (4) Repairs, if any, made to the new motor vehicle or
8 motor home in an attempt to correct each nonconformity
9 reported by the original buyer or lessee.

10 (b) The notice shall be on a form 8 1/2 x 11 inches in size
11 and printed in no smaller than 10-point black type on a white
12 background. The form shall only contain the following
13 information prior to it being filled out by the manufacturer:

14 WARRANTY BUYBACK NOTICE

15 (Check One)

16 /. . ./ This new motor vehicle or motor home was repurchased by
17 the manufacturer after the last retail owner or lessee
18 requested its repurchase due to the problem(s) listed below.

19 /. . ./ THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO
20 A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE
21 TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE
22 NOTATION "LEMON LAW BUYBACK." Under Illinois law, the
23 manufacturer must warrant to you, for a one-year period, that
24 the vehicle is free of the problem(s) listed below.

1 V.I.N: Year: Make: Model:

2	Problem(s) Reported by	Repairs Made, if any, to
3	Original Owner	Correct Reported Problem(s)
4	.....	.....
5	.....	.....
6	.....	.....
7	.....	.....
8	.....	.....
9	.....	.....

10	Signature of Manufacturer	Date
11	.....	.....

12	Signature of Dealer(s)	Date
13	.....	.....
14	.....	.....
15	.....	.....

16	Signature of Retail Buyer or	Date
17	Lessee	
18	.....	.....
19	.....	.....

20 (c) The manufacturer shall provide an executed copy of the
 21 notice to the manufacturer's transferee. Each transferee,
 22 including a dealer, to whom the new motor vehicle or motor home
 23 is transferred prior to its sale to a retail buyer or lessee
 24 shall be provided an executed copy of the notice by the

1 previous transferor.

2 Section 25. Lemon decal.

3 (a) The decal required by subsection (c) of Section 15 to
4 be affixed by a manufacturer to a new motor vehicle or motor
5 home, shall be affixed to the left front door frame of the new
6 motor vehicle or motor home, or, if the new motor vehicle or
7 motor home does not have a left front door frame, it shall be
8 affixed in a location designated by the Secretary of State. The
9 decal shall specify that title to new the motor vehicle or
10 motor home has been inscribed with the notation "Lemon Law
11 Buyback" and shall be affixed to the new motor vehicle or motor
12 home in a manner prescribed by the Secretary of State.

13 (b) No person shall knowingly remove or alter any decal
14 affixed to a new motor vehicle or motor home pursuant to
15 subsection (a), whether or not licensed under the Illinois
16 Vehicle Code.

17 Section 30. Remedies.

18 (a) Any buyer of consumer goods who is damaged by a failure
19 to comply with any obligation under this Act or under an
20 implied or written warranty or service contract may bring an
21 action for the recovery of damages and other legal and
22 equitable relief.

23 (b) The measure of the buyer's damages in an action under
24 this Section shall include the rights of replacement or

1 reimbursement as set forth in Section 5, and the following:

2 (1) Where the buyer has rightfully rejected or
3 justifiably revoked acceptance of the goods or has
4 exercised any right to cancel the sale, Sections 2-711,
5 2-712, and 2-713 of the Uniform Commercial Code shall
6 apply.

7 (2) Where the buyer has accepted the goods, Sections
8 2-714 and 2-715 of the Uniform Commercial Code shall apply,
9 and the measure of damages shall include the cost of
10 repairs necessary to make the goods conform.

11 (c) If the buyer establishes that the failure to comply was
12 willful, the judgment may include, in addition to the amounts
13 recovered under subsection (a), a civil penalty which shall not
14 exceed 2 times the amount of actual damages. This subsection
15 shall not apply in any class action under Section 2-404 of the
16 Code of Civil Procedure or with respect to a claim based solely
17 on a breach of an implied warranty.

18 (d) If the buyer prevails in an action under this Section,
19 including before a qualified third-party dispute resolution
20 process, the buyer shall be allowed by the court to recover as
21 part of the judgment a sum equal to the aggregate amount of
22 costs and expenses, including attorney's fees based on actual
23 time expended, determined by the court to have been reasonably
24 incurred by the buyer in connection with the commencement and
25 prosecution of such action.

26 (e) (1) Except as otherwise provided in this subsection, if

1 the buyer establishes a violation of Section 5, the buyer shall
2 recover damages and reasonable attorney's fees and costs, and
3 may recover a civil penalty of up to 2 times the amount of
4 damages.

5 (2) If the manufacturer maintains a qualified third-party
6 dispute resolution process which substantially complies with
7 Section 10, the manufacturer shall not be liable for any civil
8 penalty pursuant to this subsection.

9 (3) After the occurrence of the events giving rise to the
10 presumption established in subsection (a) of Section 10, the
11 buyer may serve upon the manufacturer a written notice
12 requesting that the manufacturer comply with Section 5. If the
13 buyer fails to serve the notice, the manufacturer shall not be
14 liable for a civil penalty pursuant to this subsection.

15 (4) If the buyer serves the notice described in paragraph
16 (3) and the manufacturer complies with Section 5 within 30 days
17 of the service of that notice, the manufacturer shall not be
18 liable for a civil penalty pursuant to this subsection.

19 (5) If the buyer recovers a civil penalty under subsection
20 (c), the buyer may not also recover a civil penalty under this
21 subsection for the same violation.

22 Section 35. Third-party dispute resolution process
23 certification program; fund.

24 (a) The Attorney General shall establish a program for
25 certifying each third-party dispute resolution process used

1 for the arbitration of disputes pursuant to subsection (b) of
2 Section 10. In establishing the program, the Attorney General
3 shall do all of the following:

4 (1) Prescribe and provide forms to be used to apply for
5 certification under this Act.

6 (2) Establish a set of minimum standards which shall be
7 used to determine whether a third-party dispute resolution
8 process is in substantial compliance with subsection (c) of
9 Section 10.

10 (3) Prescribe the information which each manufacturer,
11 or other entity, that operates a third-party dispute
12 resolution process shall provide the Attorney General in
13 the application for certification. In prescribing the
14 information to accompany the application for
15 certification, the Attorney General shall require the
16 manufacturer, or other entity, to provide only that
17 information which the Attorney General finds is reasonably
18 necessary to enable the Attorney General to determine
19 whether the third-party dispute resolution process is in
20 substantial compliance with subsection (c) of Section 10.

21 (4) Prescribe the information that each qualified
22 third-party dispute resolution process shall provide the
23 Attorney General, and the time intervals at which the
24 information shall be required, to enable the Attorney
25 General to determine whether the qualified third-party
26 dispute resolution process continues to operate in

1 substantial compliance with subsection (c) of Section 10.

2 (b) (1) Each manufacturer may establish, or otherwise make
3 available to buyers or lessees of new motor vehicles or motor
4 homes, a qualified third-party dispute resolution process for
5 the resolution of disputes pursuant to subsection (b) of
6 Section 10. A manufacturer that itself operates the third-party
7 dispute resolution process shall apply to the Attorney General
8 for certification of that process. If the manufacturer makes
9 the third-party dispute resolution process available to buyers
10 or lessees of new motor vehicles or motor homes through
11 contract or other arrangement with another entity, that entity
12 shall apply to the Attorney General for certification. An
13 entity that operates a third-party dispute resolution process
14 for more than one manufacturer shall make a separate
15 application for certification for each manufacturer that uses
16 that entity's third-party dispute resolution process. The
17 application for certification shall be accompanied by the
18 information prescribed by the Attorney General.

19 (2) The Attorney General shall review the application and
20 accompanying information and, after conducting an onsite
21 inspection, shall determine whether the third-party dispute
22 resolution process is in substantial compliance with
23 subsection (c) of Section 10 and this Section. If the Attorney
24 General determines that the process is in substantial
25 compliance, the Attorney General shall certify the process. If
26 the Attorney General determines that the process is not in

1 substantial compliance, the Attorney General shall deny
2 certification and shall state, in writing, the reasons for
3 denial and the modifications in the operation of the process
4 that are required in order for the process to be certified.

5 (3) The Attorney General shall make a final determination
6 whether to certify a third-party dispute resolution process or
7 to deny certification not later than 90 calendar days following
8 the date the Attorney General accepts the application for
9 certification as complete.

10 (c)(1) The Attorney General, in accordance with the time
11 intervals prescribed pursuant to paragraph (4) of subsection
12 (a), but at least once annually, shall review the operation and
13 performance of each qualified third-party dispute resolution
14 process and determine, using the information provided the
15 Attorney General as prescribed pursuant to paragraph (4) of
16 subsection (a) and the monitoring and inspection information
17 described in paragraph (3) of subsection (d), whether the
18 process is operating in substantial compliance with subsection
19 (c) of Section 10 and this Section. If the Attorney General
20 determines that the process is in substantial compliance, the
21 certification shall remain in effect.

22 (2) If the Attorney General determines that the process is
23 not in substantial compliance with subsection (c) of Section 10
24 or this Section, the Attorney General shall issue a notice of
25 decertification to the entity which operates the process and
26 shall send a copy of that notice to any manufacturer affected

1 by the decertification. The notice of decertification shall
2 state the reasons for the issuance of the notice and prescribe
3 the modifications in the operation of the process that are
4 required in order for the process to retain its certification.

5 (3) A notice of decertification shall take effect 180
6 calendar days following the date the notice is served on the
7 manufacturer, or other entity, which uses the process that the
8 Attorney General has determined is not in substantial
9 compliance with subsection (c) of Section 10 or this Section.
10 The Attorney General shall withdraw the notice of
11 decertification prior to its effective date if the Attorney
12 General determines, after a public hearing, that the
13 manufacturer, or other entity, which uses the process has made
14 the modifications in the operation of the process required in
15 the notice of decertification and is in substantial compliance
16 with subsection (c) of Section 10 and this Section.

17 (d) In addition to any other requirements of this Section,
18 the Attorney General shall do all of the following:

19 (1) Establish procedures to assist owners or lessees of
20 new motor vehicles or motor homes who have complaints
21 regarding the operation of a qualified third-party dispute
22 resolution process.

23 (2) Establish methods for measuring customer
24 satisfaction and to identify violations of this Section,
25 which shall include an annual random postcard or telephone
26 survey by the Attorney General of the customers of each

1 qualified third-party dispute resolution process.

2 (3) Monitor and inspect, on a regular basis, qualified
3 third-party dispute resolution processes to determine
4 whether they continue to meet the standards for
5 certification. Monitoring and inspection shall include,
6 but not be limited to, all of the following:

7 (A) Onsite inspections of each qualified
8 third-party dispute resolution process not less
9 frequently than twice annually.

10 (B) Investigation of complaints from consumers
11 regarding the operation of qualified third-party
12 dispute resolution processes and analyses of
13 representative samples of complaints against each
14 process.

15 (C) Analyses of the annual surveys required by
16 paragraph (2).

17 (5) Submit a biennial report to the General Assembly
18 evaluating the effectiveness of this Section, make
19 available to the public summaries of the statistics and
20 other information supplied by each qualified third-party
21 dispute resolution process, and publish educational
22 materials regarding the purposes of this Section.

23 (6) Adopt rules as necessary and appropriate to
24 implement this Section and subsection (c) of Section 10.

25 (7) Protection of the public shall be the highest
26 priority for the Attorney General in exercising its

1 certification, regulatory, and disciplinary functions.
2 Whenever the protection of the public is inconsistent with
3 other interests sought to be promoted, the protection of
4 the public shall be paramount.

5 (e) The Secretary of State shall, in accordance with the
6 procedures prescribed in this subsection, administer the
7 collection of fees for the purposes of fully funding the
8 administration of this subsection.

9 (1) Fees collected pursuant to this subsection shall be
10 deposited into the Motor Vehicle Dispute Resolution
11 Certification Fund, a special fund created in the State
12 treasury, and shall be available, upon appropriation by the
13 General Assembly, exclusively to pay the expenses incurred
14 by the Attorney General in administering this Section. If,
15 at the conclusion of any fiscal year, the amount of fees
16 collected exceeds the amount of expenditures for that
17 purpose during that fiscal year, the surplus in the Dispute
18 Resolution Certification Fund shall be carried forward
19 into the succeeding fiscal year.

20 (2) Beginning July 1, 2020, and on or before May 1 of
21 each calendar year thereafter, every manufacturer shall
22 file with the Secretary of State a statement of the number
23 of new motor vehicles and motor homes sold, leased, or
24 otherwise distributed by or for the manufacturer in this
25 State during the preceding calendar year, and shall, upon
26 written notice delivered to the manufacturer by certified

1 mail, return receipt requested, pay to the Secretary of
2 State a fee, not to exceed \$1 for each new motor vehicle or
3 motor home sold, leased, or distributed by or for the
4 manufacturer in this State during the preceding calendar
5 year. The total fee paid by each manufacturer shall be
6 rounded to the nearest dollar. Not more than \$1 shall be
7 charged, collected, or received from any one or more
8 manufacturers pursuant to this subsection with respect to
9 the same new motor vehicle or motor home.

10 (3) The fee required by paragraph (2) is due and
11 payable not later than 30 days after the manufacturer has
12 received notice of the amount due and is delinquent after
13 that time. A penalty of 10% of the amount delinquent shall
14 be added to that amount, if the delinquency continues for
15 more than 30 days. If a manufacturer fails to file the
16 statement required by paragraph (2) by the date specified,
17 the Secretary of State shall assess the amount due from the
18 manufacturer by using as the number of new motor vehicles
19 or motor homes sold, leased, or otherwise distributed by or
20 for the manufacturer in this State during the preceding
21 calendar year the total number of new registrations of all
22 new motor vehicles or motor homes sold, leased, or
23 otherwise distributed by or for the manufacturer during the
24 preceding calendar year.

25 (4) On or before February 1 of each year, the Attorney
26 General shall notify the Secretary of State of the dollar

1 amount necessary to fully fund the program established by
2 this Section during the following fiscal year. The
3 Secretary of State shall use this information in
4 calculating the amounts of the fees to be collected from
5 manufacturers pursuant to this subsection.

6 (5) The Secretary of State may adopt rules to implement
7 this subsection. The rules shall include, at a minimum, a
8 formula for calculating the fee, established pursuant to
9 paragraph (2), for each new motor vehicle and motor home
10 and the total amount of fees to be collected from each
11 manufacturer.

12 As used in this subsection, "new motor vehicle" means a new
13 passenger or commercial motor vehicle of a kind that is
14 required to be registered under the Illinois Vehicle Code, but
15 the term does not include a motorcycle, a motor home, or any
16 vehicle whose gross weight exceeds 10,000 pounds.

17 Section 40. Sales and use tax reimbursement.

18 (a) Notwithstanding any applicable provisions imposing a
19 tax amount on manufacturers under the Retailers' Occupation Tax
20 Act, the Use Tax Act, the Service Occupation Tax Act, or the
21 Service Use Tax Act, the Department of Revenue shall reimburse
22 the manufacturer of a new motor vehicle or motor home for an
23 amount equal to the sales tax or use tax which the manufacturer
24 pays to or for the buyer or lessee when providing a replacement
25 vehicle pursuant to paragraph (1) of Section 5 or includes in

1 making restitution to the buyer or lessee pursuant to paragraph
2 (2) of Section 5 when the manufacturer provides satisfactory
3 proof that it has complied with subsection (c) of Section 15,
4 and satisfactory proof is provided for one of the following:

5 (1) The retailer of the new motor vehicle or motor home
6 for which the manufacturer is making restitution has
7 reported and paid the sales tax on the gross receipts from
8 the sale of that motor vehicle.

9 (2) The buyer of the new motor vehicle or motor home
10 has paid the use tax on the sales price for the storage,
11 use, or other consumption of that new motor vehicle or
12 motor home in this State.

13 (3) The lessee of the new motor vehicle or motor home
14 has paid the use tax on the rentals payable from the lease
15 of that new motor vehicle or motor home.

16 (b) The Department of Revenue may adopt rules and
17 regulations to carry out, facilitate compliance with, or
18 prevent circumvention or evasion of this Section.

19 (c) This Section shall not change the application of the
20 sales and use tax to the gross receipts, the rentals payable,
21 and the sales price from the sale, lease, and the storage, use,
22 or other consumption, in this State, of tangible personal
23 property pursuant to the Retailers' Occupation Tax Act, the Use
24 Tax Act, the Service Occupation Tax Act, or the Service Use Tax
25 Act.

26 (d) The manufacturer's claim for reimbursement and the

1 Department of Revenue's approval or denial of the claim shall
2 be subject to the applicable provisions under the Retailers'
3 Occupation Tax Act, the Use Tax Act, the Service Occupation Tax
4 Act, or the Service Use Tax Act concerning claims for a credit
5 or refund of erroneously paid amounts, except provisions
6 relating to accrued interest at the rate and in the manner
7 specified in the Uniform Penalty and Interest Act, insofar as
8 those provisions are not inconsistent with this Section.

9 (e) For purposes of this Section, the amount of use tax
10 that the Department of Revenue is required to reimburse the
11 manufacturer shall be limited to the amount of use tax the
12 manufacturer is required to pay to or for the lessee pursuant
13 to Section 5.

14 Section 45. Prohibitions.

15 (a) Any automobile manufacturer, importer, distributor,
16 dealer, or lienholder who reacquires, or who assists in
17 reacquiring, a new motor vehicle or motor home, whether by
18 judgment, decree, arbitration award, settlement agreement, or
19 voluntary agreement, is prohibited from doing either of the
20 following:

21 (1) Requiring, as a condition of the reacquisition of
22 the new motor vehicle or motor home, that a buyer or lessee
23 who is a resident of this State agree not to disclose the
24 problems with the new motor vehicle or motor home
25 experienced by the buyer or lessee or the nonfinancial

1 terms of the reacquisition.

2 (2) Including, in any release or other agreement,
3 whether prepared by the manufacturer, importer,
4 distributor, dealer, or lienholder, for signature by the
5 buyer or lessee, a confidentiality clause, gag clause, or
6 similar clause prohibiting the buyer or lessee from
7 disclosing information to anyone about the problems with
8 the new motor vehicle or motor home, or the nonfinancial
9 terms of the reacquisition of the new motor vehicle or
10 motor home by the manufacturer, importer, distributor,
11 dealer, or lienholder.

12 (b) Any confidentiality clause, gag clause, or similar
13 clause in such a release or other agreement in violation of
14 this Section shall be null and void as against the public
15 policy of this State.

16 (c) Nothing in this Section is intended to prevent any
17 confidentiality clause, gag clause, or similar clause
18 regarding the financial terms of the reacquisition of the new
19 motor vehicle or motor home.

20 Section 900. The State Finance Act is amended by adding
21 Section 5.891 as follows:

22 (30 ILCS 105/5.891 new)

23 Sec. 5.891. The Motor Vehicle Dispute Resolution
24 Certification Fund.

1 Section 905. The Retailers' Occupation Tax Act is amended
2 by changing Section 6 as follows:

3 (35 ILCS 120/6) (from Ch. 120, par. 445)

4 Sec. 6. Credit memorandum or refund. If it appears, after
5 claim therefor filed with the Department, that an amount of tax
6 or penalty or interest has been paid which was not due under
7 this Act, whether as the result of a mistake of fact or an
8 error of law, except as hereinafter provided, then the
9 Department shall issue a credit memorandum or refund to the
10 person who made the erroneous payment or, if that person died
11 or became a person under legal disability, to his or her legal
12 representative, as such. For purposes of this Section, the tax
13 is deemed to be erroneously paid by a retailer when the
14 manufacturer of a new motor vehicle or motor home sold by the
15 retailer accepts the return of that new motor vehicle or motor
16 home ~~automobile~~ and refunds to the purchaser the selling price
17 of that new motor vehicle or motor home as provided in the New
18 Vehicle Buyer Protection Act of 2019. When a new motor vehicle
19 or motor home is returned for a refund of the purchase price
20 under the New Vehicle Buyer Protection Act of 2019, the
21 Department shall issue a credit memorandum or a refund for the
22 amount of tax paid by the retailer under this Act attributable
23 to the initial sale of that new motor vehicle or motor home.
24 Claims submitted by the retailer are subject to the same

1 restrictions and procedures provided for in this Act. If it is
2 determined that the Department should issue a credit memorandum
3 or refund, the Department may first apply the amount thereof
4 against any tax or penalty or interest due or to become due
5 under this Act or under the Use Tax Act, the Service Occupation
6 Tax Act, the Service Use Tax Act, any local occupation or use
7 tax administered by the Department, Section 4 of the Water
8 Commission Act of 1985, subsections (b), (c) and (d) of Section
9 5.01 of the Local Mass Transit District Act, or subsections
10 (e), (f) and (g) of Section 4.03 of the Regional Transportation
11 Authority Act, from the person who made the erroneous payment.
12 If no tax or penalty or interest is due and no proceeding is
13 pending to determine whether such person is indebted to the
14 Department for tax or penalty or interest, the credit
15 memorandum or refund shall be issued to the claimant; or (in
16 the case of a credit memorandum) the credit memorandum may be
17 assigned and set over by the lawful holder thereof, subject to
18 reasonable rules of the Department, to any other person who is
19 subject to this Act, the Use Tax Act, the Service Occupation
20 Tax Act, the Service Use Tax Act, any local occupation or use
21 tax administered by the Department, Section 4 of the Water
22 Commission Act of 1985, subsections (b), (c) and (d) of Section
23 5.01 of the Local Mass Transit District Act, or subsections
24 (e), (f) and (g) of Section 4.03 of the Regional Transportation
25 Authority Act, and the amount thereof applied by the Department
26 against any tax or penalty or interest due or to become due

1 under this Act or under the Use Tax Act, the Service Occupation
2 Tax Act, the Service Use Tax Act, any local occupation or use
3 tax administered by the Department, Section 4 of the Water
4 Commission Act of 1985, subsections (b), (c) and (d) of Section
5 5.01 of the Local Mass Transit District Act, or subsections
6 (e), (f) and (g) of Section 4.03 of the Regional Transportation
7 Authority Act, from such assignee. However, as to any claim for
8 credit or refund filed with the Department on and after each
9 January 1 and July 1 no amount of tax or penalty or interest
10 erroneously paid (either in total or partial liquidation of a
11 tax or penalty or amount of interest under this Act) more than
12 3 years prior to such January 1 and July 1, respectively, shall
13 be credited or refunded, except that if both the Department and
14 the taxpayer have agreed to an extension of time to issue a
15 notice of tax liability as provided in Section 4 of this Act,
16 such claim may be filed at any time prior to the expiration of
17 the period agreed upon.

18 No claim may be allowed for any amount paid to the
19 Department, whether paid voluntarily or involuntarily, if paid
20 in total or partial liquidation of an assessment which had
21 become final before the claim for credit or refund to recover
22 the amount so paid is filed with the Department, or if paid in
23 total or partial liquidation of a judgment or order of court.
24 No credit may be allowed or refund made for any amount paid by
25 or collected from any claimant unless it appears (a) that the
26 claimant bore the burden of such amount and has not been

1 relieved thereof nor reimbursed therefor and has not shifted
2 such burden directly or indirectly through inclusion of such
3 amount in the price of the tangible personal property sold by
4 him or her or in any manner whatsoever; and that no
5 understanding or agreement, written or oral, exists whereby he
6 or she or his or her legal representative may be relieved of
7 the burden of such amount, be reimbursed therefor or may shift
8 the burden thereof; or (b) that he or she or his or her legal
9 representative has repaid unconditionally such amount to his or
10 her vendee (1) who bore the burden thereof and has not shifted
11 such burden directly or indirectly, in any manner whatsoever;
12 (2) who, if he or she has shifted such burden, has repaid
13 unconditionally such amount to his own vendee; and (3) who is
14 not entitled to receive any reimbursement therefor from any
15 other source than from his or her vendor, nor to be relieved of
16 such burden in any manner whatsoever. No credit may be allowed
17 or refund made for any amount paid by or collected from any
18 claimant unless it appears that the claimant has
19 unconditionally repaid, to the purchaser, any amount collected
20 from the purchaser and retained by the claimant with respect to
21 the same transaction under the Use Tax Act.

22 Any credit or refund that is allowed under this Section
23 shall bear interest at the rate and in the manner specified in
24 the Uniform Penalty and Interest Act.

25 In case the Department determines that the claimant is
26 entitled to a refund, such refund shall be made only from such

1 appropriation as may be available for that purpose. If it
2 appears unlikely that the amount appropriated would permit
3 everyone having a claim allowed during the period covered by
4 such appropriation to elect to receive a cash refund, the
5 Department, by rule or regulation, shall provide for the
6 payment of refunds in hardship cases and shall define what
7 types of cases qualify as hardship cases.

8 If a retailer who has failed to pay retailers' occupation
9 tax on gross receipts from retail sales is required by the
10 Department to pay such tax, such retailer, without filing any
11 formal claim with the Department, shall be allowed to take
12 credit against such retailers' occupation tax liability to the
13 extent, if any, to which such retailer has paid an amount
14 equivalent to retailers' occupation tax or has paid use tax in
15 error to his or her vendor or vendors of the same tangible
16 personal property which such retailer bought for resale and did
17 not first use before selling it, and no penalty or interest
18 shall be charged to such retailer on the amount of such credit.
19 However, when such credit is allowed to the retailer by the
20 Department, the vendor is precluded from refunding any of that
21 tax to the retailer and filing a claim for credit or refund
22 with respect thereto with the Department. The provisions of
23 this amendatory Act shall be applied retroactively, regardless
24 of the date of the transaction.

25 (Source: P.A. 91-901, eff. 1-1-01.)

1 Section 910. The Illinois Vehicle Code is amended by
2 changing Section 5-104.2 as follows:

3 (625 ILCS 5/5-104.2)

4 Sec. 5-104.2. Nonconforming vehicles; sale.

5 (a) Every manufacturer shall be prohibited from reselling
6 any new motor vehicle or motor home that has been finally
7 ordered, determined, or adjudicated as having a nonconformity
8 under the New Vehicle Buyer Protection Act, the New Vehicle
9 Buyer Protection Act of 2019, or a similar law of any state,
10 territory, or country, and that the manufacturer repurchased or
11 replaced because of the nonconformity, unless the manufacturer
12 has corrected the nonconformity and issues a disclosure
13 statement prior to resale stating that the new motor vehicle or
14 motor home was repurchased or replaced under the New Vehicle
15 Buyer Protection Act, the New Vehicle Buyer Protection Act of
16 2019, or similar law of any other state, territory, or country;
17 identifying the nonconformity; and warranting that the
18 nonconformity has been corrected. The disclosure statement
19 must accompany the new motor vehicle or motor home through the
20 first retail purchase.

21 (b) "Nonconformity" refers to a new motor vehicle's or
22 motor home's failure to conform to all written ~~express~~
23 warranties applicable to the new motor vehicle or motor home,
24 which failure substantially impairs the use, market value, or
25 safety of the new motor vehicle or motor home.

1 (c) The disclosure statement referred to in subsection (a)
2 shall be in substantially the same form as below:

3 "IMPORTANT

4 Vehicle Identification Number (VIN): (Insert VIN Number);
5 Year: (Insert Year); Make (Insert Make); Model: (Insert
6 Model). This vehicle was previously sold as new. It was
7 subsequently ordered as having a nonconformity by final
8 decision of court proceeding or State run arbitration. It
9 was subsequently repurchased by its manufacturer because
10 it did not conform to the manufacturer's written ~~express~~
11 warranty and the nonconformity was not cured within a
12 reasonable time as provided by Illinois law. The following
13 nonconformities have been corrected (a minimum of 5
14 numbered lines shall be provided to describe the
15 nonconformity or nonconformities)."

16 The customer shall sign the disclosure statement. This
17 disclosure language shall be in at least 8-point type.

18 (Source: P.A. 88-415.)

19 (815 ILCS 380/Act rep.)

20 Section 915. The New Vehicle Buyer Protection Act is
21 repealed.