

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 Section 4 as follows:

6 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

7 Sec. 4. Unfair competition and practices.

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

14 (b) It shall be deemed a violation for any manufacturer,
15 factory branch, factory representative, distributor or
16 wholesaler, distributor branch, distributor representative or
17 motor vehicle dealer to engage in any action with respect to a
18 franchise which is arbitrary, in bad faith or unconscionable
19 and which causes damage to any of the parties or to the public.

20 (c) It shall be deemed a violation for a manufacturer, a
21 distributor, a wholesaler, a distributor branch or division, a
22 factory branch or division, or a wholesale branch or division,
23 or officer, agent or other representative thereof, to coerce,

1 or attempt to coerce, any motor vehicle dealer:

2 (1) to accept, buy or order any motor vehicle or
3 vehicles, appliances, equipment, parts or accessories
4 therefor, or any other commodity or commodities or service
5 or services which such motor vehicle dealer has not
6 voluntarily ordered or requested except items required by
7 applicable local, state or federal law; or to require a
8 motor vehicle dealer to accept, buy, order or purchase
9 such items in order to obtain any motor vehicle or
10 vehicles or any other commodity or commodities which have
11 been ordered or requested by such motor vehicle dealer;

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

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

20 (c-5) A manufacturer, a distributor, a wholesaler, a
21 distributor branch or division, a factory branch or division,
22 or a wholesale branch or division, or officer, agent, or other
23 representative thereof may not:

24 (1) require a motor vehicle dealer to offer a
25 secondary product; or

26

1 (2) prohibit a motor vehicle dealer from offering a
2 secondary product, including, but not limited to:

3 (A) service contracts;

4 (B) maintenance agreements;

5 (C) extended warranties;

6 (D) protection product guarantees;

7 (E) guaranteed asset protection waivers;

8 (F) insurance;

9 (G) replacement parts;

10 (H) vehicle accessories;

11 (I) oil; or

12 (J) supplies.

13 It is not a violation of this subsection to offer an
14 incentive program to motor vehicle dealers to encourage them
15 to sell or offer to sell a secondary product approved,
16 endorsed, sponsored, or offered by the manufacturer,
17 distributor, wholesaler, distributor branch or division,
18 factory branch or division, wholesale branch or division, or
19 officer, agent, or other representative thereof, provided the
20 program does not provide vehicle sales or service incentives.

21 It is not a violation of this subsection to prohibit a
22 motor vehicle dealer from using secondary products for any
23 repair work paid for under the terms of a warranty, recall,
24 service contract, extended warranty, maintenance plan, or
25 certified pre-owned vehicle program established or offered by
26 the manufacturer, distributor, wholesaler, distributor branch

1 or division, factory branch or division, or wholesale branch
2 or division, or officer, agent, or other representative
3 thereof.

4 As used in this subsection, "secondary product" means all
5 products that are not new motor vehicles or original equipment
6 manufacturer parts.

7 (d) It shall be deemed a violation for a manufacturer, a
8 distributor, a wholesaler, a distributor branch or division,
9 or officer, agent or other representative thereof:

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

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

23 (3) to refuse to deliver in reasonable quantities and
24 within a reasonable time after receipt of dealer's order,
25 to any motor vehicle dealer having a franchise or selling
26 agreement for the retail sale of new motor vehicles sold

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

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

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

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

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

26 (A) If a manufacturer, distributor, wholesaler,

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

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

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

25 Each notice of proposed action shall include a
26 detailed statement setting forth the specific grounds

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

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

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

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

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

24 (D) Notwithstanding the terms, conditions, or
25 provisions of a franchise or selling agreement, the
26 following shall not constitute good cause for

1 cancelling or terminating or failing to extend or
2 renew the franchise or selling agreement: (i) the
3 change of ownership or executive management of the
4 franchisee's dealership; or (ii) the fact that the
5 franchisee or owner of an interest in the franchise
6 owns, has an investment in, participates in the
7 management of, or holds a license for the sale of the
8 same or any other line make of new motor vehicles.

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

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

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

12 (8) to require or otherwise coerce a motor vehicle
13 dealer to underutilize the motor vehicle dealer's
14 facilities by requiring or otherwise coercing the motor
15 vehicle dealer to exclude or remove from the motor vehicle
16 dealer's facilities operations for selling or servicing of
17 any vehicles for which the motor vehicle dealer has a
18 franchise agreement with another manufacturer,
19 distributor, wholesaler, distribution branch or division,
20 or officer, agent, or other representative thereof;
21 provided, however, that, in light of all existing
22 circumstances, (i) the motor vehicle dealer maintains a
23 reasonable line of credit for each make or line of new
24 motor vehicle, (ii) the new motor vehicle dealer remains
25 in compliance with any reasonable facilities requirements
26 of the manufacturer, (iii) no change is made in the

1 principal management of the new motor vehicle dealer, and
2 (iv) the addition of the make or line of new motor vehicles
3 would be reasonable. The reasonable facilities requirement
4 set forth in item (ii) of subsection (d)(8) shall not
5 include any requirement that a franchisee establish or
6 maintain exclusive facilities, personnel, or display
7 space. Any decision by a motor vehicle dealer to sell
8 additional makes or lines at the motor vehicle dealer's
9 facility shall be presumed to be reasonable, and the
10 manufacturer shall have the burden to overcome that
11 presumption. A motor vehicle dealer must provide a written
12 notification of its intent to add a make or line of new
13 motor vehicles to the manufacturer. If the manufacturer
14 does not respond to the motor vehicle dealer, in writing,
15 objecting to the addition of the make or line within 60
16 days after the date that the motor vehicle dealer sends
17 the written notification, then the manufacturer shall be
18 deemed to have approved the addition of the make or line;

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

26 (A) the motor vehicle dealer's eligibility to

1 purchase program, certified, or other used motor
2 vehicles from the manufacturer, distributor, or
3 wholesaler;

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

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

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

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

1 or reasonably should have known of the customer's intent
2 to export or resell the vehicle in violation of the
3 prohibition at the time of the sale or lease. If the dealer
4 causes the vehicle to be registered and titled in this or
5 any other state, and collects or causes to be collected
6 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 to construct
11 improvements to his or her facilities or to install new
12 signs or other franchiser image elements that replace or
13 substantially alter those improvements, signs, or
14 franchiser image elements completed within the past 10
15 years that were required and approved by the manufacturer
16 or one of its affiliates. The 10-year period under this
17 paragraph (11) begins to run for a dealer, including that
18 dealer's successors and assigns, on the date that the
19 manufacturer gives final written approval of the facility
20 improvements or installation of signs or other franchiser
21 image elements or the date that the dealer receives a
22 certificate of occupancy, whichever is later. For the
23 purpose of this paragraph (11), the term "substantially
24 alter" does not include routine maintenance, including,
25 but not limited to, interior painting, that is reasonably
26 necessary to keep a dealer facility in attractive

1 condition; or

2 (12) to require a dealer to purchase goods or services
3 to make improvements to the dealer's facilities from a
4 vendor selected, identified, or designated by a
5 manufacturer or one of its affiliates by agreement,
6 program, incentive provision, or otherwise without making
7 available to the dealer the option to obtain the goods or
8 services of substantially similar quality and overall
9 design from a vendor chosen by the dealer and approved by
10 the manufacturer; however, approval by the manufacturer
11 shall not be unreasonably withheld, and the dealer's
12 option to select a vendor shall not be available if the
13 manufacturer provides substantial reimbursement for the
14 goods or services offered. "Substantial reimbursement"
15 means an amount equal to or greater than the cost savings
16 that would result if the dealer were to utilize a vendor of
17 the dealer's own selection instead of using the vendor
18 identified by the manufacturer. For the purpose of this
19 paragraph (12), the term "goods" does not include movable
20 displays, brochures, and promotional materials containing
21 material subject to the intellectual property rights of a
22 manufacturer. If signs, other than signs containing the
23 manufacturer's brand or logo or free-standing signs that
24 are not directly attached to a building, or other
25 franchiser image or design elements or trade dress are to
26 be leased to the dealer by a vendor selected, identified,

1 or designated by the manufacturer, the dealer has the
2 right to purchase the signs or other franchiser image or
3 design elements or trade dress of substantially similar
4 quality and design from a vendor selected by the dealer if
5 the signs, franchiser image or design elements, or trade
6 dress are approved by the manufacturer. Approval by the
7 manufacturer shall not be unreasonably withheld. This
8 paragraph (12) shall not be construed to allow a dealer or
9 vendor to impair, infringe upon, or eliminate, directly or
10 indirectly, the intellectual property rights of the
11 manufacturer, including, but not limited to, the
12 manufacturer's intellectual property rights in any
13 trademarks or trade dress, or other intellectual property
14 interests owned or controlled by the manufacturer. This
15 paragraph (12) shall not be construed to permit a dealer
16 to erect or maintain signs that do not conform to the
17 manufacturer's intellectual property rights or trademark
18 or trade dress usage guidelines.

19 (e) It shall be deemed a violation for a manufacturer, a
20 distributor, a wholesaler, a distributor branch or division or
21 officer, agent or other representative thereof:

22 (1) to resort to or use any false or misleading
23 advertisement in connection with his business as such
24 manufacturer, distributor, wholesaler, distributor branch
25 or division or officer, agent or other representative
26 thereof;

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

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

1 (4) to prevent or attempt to prevent by contract or
2 otherwise any motor vehicle dealer or franchisee from
3 changing the executive management control of the motor
4 vehicle dealer or franchisee unless the franchiser, having
5 the burden of proof, proves that such change of executive
6 management will result in executive management control by
7 a person or persons who are not of good moral character or
8 who do not meet the franchiser's existing and, with
9 consideration given to the volume of sales and service of
10 the dealership, uniformly applied minimum business
11 experience standards in the market area. However, where
12 the manufacturer rejects a proposed change in executive
13 management control, the manufacturer shall give written
14 notice of his reasons to the dealer within 60 days of
15 notice to the manufacturer by the dealer of the proposed
16 change. If the manufacturer does not send a letter to the
17 franchisee by certified mail, return receipt requested,
18 within 60 days from receipt by the manufacturer of the
19 proposed change, then the change of the executive
20 management control of the franchisee shall be deemed
21 accepted as proposed by the franchisee, and the
22 manufacturer shall give immediate effect to such change;

23 (5) to prevent or attempt to prevent by contract or
24 otherwise any motor vehicle dealer from establishing or
25 changing the capital structure of his dealership or the
26 means by or through which he finances the operation

1 thereof; provided the dealer meets any reasonable capital
2 standards agreed to between the dealer and the
3 manufacturer, distributor or wholesaler, who may require
4 that the sources, method and manner by which the dealer
5 finances or intends to finance its operation, equipment or
6 facilities be fully disclosed;

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

26 (A) If the manufacturer intends to refuse to

1 approve the sale or transfer of all or a part of the
2 interest, then it shall, within 60 days from receipt
3 of the completed application forms generally utilized
4 by a manufacturer to conduct its review and a copy of
5 all agreements regarding the proposed transfer, send a
6 letter by certified mail, return receipt requested,
7 advising the franchisee of any refusal to approve the
8 sale or transfer of all or part of the interest and
9 shall state that the dealer only has 30 days from the
10 receipt of the notice to file with the Motor Vehicle
11 Review Board a written protest against the proposed
12 action. The notice shall set forth specific criteria
13 used to evaluate the prospective transferee and the
14 grounds for refusing to approve the sale or transfer
15 to that transferee. Within 30 days from the
16 franchisee's receipt of the manufacturer's notice, the
17 franchisee may file with the Board a written protest
18 against the proposed action.

19 When a protest has been timely filed, the Board
20 shall enter an order, fixing the date (within 60 days
21 of the date of such order), time, and place of a
22 hearing on the protest, required under Sections 12 and
23 29 of this Act, and send by certified mail, return
24 receipt requested, a copy of the order to the
25 manufacturer that filed notice of intention of the
26 proposed action and to the protesting franchisee.

1 The manufacturer shall have the burden of proof to
2 establish that good cause exists to refuse to approve
3 the sale or transfer to the transferee. The
4 determination whether good cause exists to refuse to
5 approve the sale or transfer shall be made by the Board
6 under subdivisions (6) (B). The manufacturer shall not
7 refuse to approve the sale or transfer by a dealer or
8 an officer, partner, or stockholder of a franchise or
9 any part of the interest to any person or persons
10 before the hearing process is concluded as prescribed
11 by this Act, and thereafter if the Board determines
12 that the manufacturer has failed to meet its burden of
13 proof and that good cause does not exist to refuse to
14 approve the sale or transfer to the transferee.

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

26 (7) to obtain money, goods, services, anything of

1 value, or any other benefit from any other person with
2 whom the motor vehicle dealer does business, on account of
3 or in relation to the transactions between the dealer and
4 the other person as compensation, except for services
5 actually rendered, unless such benefit is promptly
6 accounted for and transmitted to the motor vehicle dealer;

7 (8) to grant an additional franchise in the relevant
8 market area of an existing franchise of the same line make
9 or to relocate an existing motor vehicle dealership within
10 or into a relevant market area of an existing franchise of
11 the same line make. However, if the manufacturer wishes to
12 grant such an additional franchise to an independent
13 person in a bona fide relationship in which such person is
14 prepared to make a significant investment subject to loss
15 in such a dealership, or if the manufacturer wishes to
16 relocate an existing motor vehicle dealership, then the
17 manufacturer shall send a letter by certified mail, return
18 receipt requested, to each existing dealer or dealers of
19 the same line make whose relevant market area includes the
20 proposed location of the additional or relocated franchise
21 at least 60 days before the manufacturer grants an
22 additional franchise or relocates an existing franchise of
23 the same line make within or into the relevant market area
24 of an existing franchisee of the same line make. Each
25 notice shall set forth the specific grounds for the
26 proposed grant of an additional or relocation of an

1 existing franchise and shall state that the dealer has
2 only 30 days from the date of receipt of the notice to file
3 with the Motor Vehicle Review Board a written protest
4 against the proposed action. Unless the parties agree upon
5 the grant or establishment of the additional or relocated
6 franchise within 30 days from the date the notice was
7 received by the existing franchisee of the same line make
8 or any person entitled to receive such notice, the
9 franchisee or other person may file with the Board a
10 written protest against the grant or establishment of the
11 proposed additional or relocated franchise.

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

23 When more than one protest is filed against the grant
24 or establishment of the additional or relocated franchise
25 of the same line make, the Board may consolidate the
26 hearings to expedite disposition of the matter. The

1 manufacturer shall have the burden of proof to establish
2 that good cause exists to allow the grant or establishment
3 of the additional or relocated franchise. The manufacturer
4 may not grant or establish the additional franchise or
5 relocate the existing franchise before the hearing process
6 is concluded as prescribed by this Act, and thereafter if
7 the Board determines that the manufacturer has failed to
8 meet its burden of proof and that good cause does not exist
9 to allow the grant or establishment of the additional
10 franchise or relocation of the existing franchise.

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

25 A. (Blank).

26 B. For the purposes of this Section, appointment

1 of a successor motor vehicle dealer at the same
2 location as its predecessor, or within 2 miles of such
3 location, or the relocation of an existing dealer or
4 franchise within 2 miles of the relocating dealer's or
5 franchisee's existing location, shall not be construed
6 as a grant, establishment or the entering into of an
7 additional franchise or selling agreement, or a
8 relocation of an existing franchise. The reopening of
9 a motor vehicle dealership that has not been in
10 operation for 18 months or more shall be deemed the
11 grant of an additional franchise or selling agreement.

12 C. This Section does not apply to the relocation
13 of an existing dealership or franchise in a county
14 having a population of more than 300,000 persons when
15 the new location is within the dealer's current
16 relevant market area, provided the new location is
17 more than 7 miles from the nearest dealer of the same
18 line make. This Section does not apply to the
19 relocation of an existing dealership or franchise in a
20 county having a population of less than 300,000
21 persons when the new location is within the dealer's
22 current relevant market area, provided the new
23 location is more than 12 miles from the nearest dealer
24 of the same line make. A dealer that would be farther
25 away from the new location of an existing dealership
26 or franchise of the same line make after a relocation

1 may not file a written protest against the relocation
2 with the Motor Vehicle Review Board.

3 D. Nothing in this Section shall be construed to
4 prevent a franchiser from implementing affirmative
5 action programs providing business opportunities for
6 minorities or from complying with applicable federal,
7 State or local law;

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

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

1 under the existing franchise if:

2 (i) The designated successor gives the
3 franchiser written notice by certified mail,
4 return receipt requested, of his or her intention
5 to succeed to the ownership of the dealer within
6 60 days of the dealer's death or incapacity; and

7 (ii) The designated successor agrees to be
8 bound by all the terms and conditions of the
9 existing franchise.

10 Notwithstanding the foregoing, in the event the motor
11 vehicle dealer or franchisee and manufacturer have duly
12 executed an agreement concerning succession rights prior
13 to the dealer's death or incapacitation, the agreement
14 shall be observed.

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

1 The notice shall set forth the specific grounds for
2 the refusal to honor the succession and discontinue
3 the existing franchise agreement.

4 If notice of refusal is not timely served upon the
5 designated successor, the franchise agreement shall
6 continue in effect subject to termination only as
7 otherwise permitted by paragraph (6) of subsection (d)
8 of Section 4 of this Act.

9 Within 30 days from the date the notice was
10 received by the designated successor or any other
11 person entitled to notice, the designee or other
12 person may file with the Board a written protest
13 against the proposed action.

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

22 The manufacturer shall have the burden of proof to
23 establish that good cause exists to refuse to honor
24 the succession and discontinue the existing franchise
25 agreement. The determination whether good cause exists
26 to refuse to honor the succession shall be made by the

1 Board under subdivision (B) of this paragraph (10).
2 The manufacturer shall not refuse to honor the
3 succession or discontinue the existing franchise
4 agreement before the hearing process is concluded as
5 prescribed by this Act, and thereafter if the Board
6 determines that it has failed to meet its burden of
7 proof and that good cause does not exist to refuse to
8 honor the succession and discontinue the existing
9 franchise agreement.

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

22 (11) to prevent or refuse to approve a proposal to
23 establish a successor franchise at a location previously
24 approved by the franchiser when submitted with the
25 voluntary termination by the existing franchisee unless
26 the successor franchisee would not otherwise qualify for a

1 new motor vehicle dealer's license under the Illinois
2 Vehicle Code or unless the franchiser, having the burden
3 of proof, proves that such proposed successor is not of
4 good moral character or does not meet the franchiser's
5 existing and reasonable capital standards and, with
6 consideration given to the volume of sales and service of
7 the dealership, uniformly applied minimum business
8 experience standards in the market area. However, when
9 such a rejection of a proposal is made, the manufacturer
10 shall give written notice of its reasons to the franchisee
11 within 60 days of receipt by the manufacturer of the
12 proposal. However, nothing herein shall be construed to
13 prevent a franchiser from implementing affirmative action
14 programs providing business opportunities for minorities,
15 or from complying with applicable federal, State or local
16 law;

17 (12) to prevent or refuse to grant a franchise to a
18 person because such person owns, has investment in or
19 participates in the management of or holds a franchise for
20 the sale of another make or line of motor vehicles within 7
21 miles of the proposed franchise location in a county
22 having a population of more than 300,000 persons, or
23 within 12 miles of the proposed franchise location in a
24 county having a population of less than 300,000 persons;

25 (13) to prevent or attempt to prevent any new motor
26 vehicle dealer from establishing any additional motor

1 vehicle dealership or other facility limited to the sale
2 of factory repurchase vehicles or late model vehicles or
3 otherwise offering for sale factory repurchase vehicles of
4 the same line make at an existing franchise by failing to
5 make available any contract, agreement or other
6 arrangement which is made available or otherwise offered
7 to any person; or

8 (14) to exercise a right of first refusal or other
9 right to acquire a franchise from a dealer, unless the
10 manufacturer:

11 (A) notifies the dealer in writing that it intends
12 to exercise its right to acquire the franchise not
13 later than 60 days after the manufacturer's or
14 distributor's receipt of a notice of the proposed
15 transfer from the dealer and all information and
16 documents reasonably and customarily required by the
17 manufacturer or distributor supporting the proposed
18 transfer;

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

1 refusal or such other right, the manufacturer or
2 distributor shall have the right to assign the lease
3 or to convey the real property;

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

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

1 proposed transferee for its expenses not later than 90
2 days after receipt of the itemized list. A
3 manufacturer or distributor may request to be provided
4 with the itemized list of expenses before exercising
5 the manufacturer's or distributor's right of first
6 refusal.

7 Except as provided in this paragraph (14), neither the
8 selling dealer nor the manufacturer or distributor shall
9 have any liability to any person as a result of a
10 manufacturer or distributor exercising its right of first
11 refusal.

12 For the purpose of this paragraph, "proposed
13 transferee" means the person to whom the franchise would
14 have been transferred to, or was proposed to be
15 transferred to, had the right of first refusal or other
16 right to acquire the franchise not been exercised by the
17 manufacturer or distributor.

18 (f) It is deemed a violation for a manufacturer, a
19 distributor, a wholesaler, a distributor branch or division, a
20 factory branch or division, or a wholesale branch or division,
21 or officer, agent, broker, shareholder, except a shareholder
22 of 1% or less of the outstanding shares of any class of
23 securities of a manufacturer, distributor, or wholesaler which
24 is a publicly traded corporation, or other representative,
25 directly or indirectly, to own or operate a place of business
26 as a motor vehicle franchisee or motor vehicle financing

1 affiliate, except that, this subsection shall not prohibit:

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

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

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

24 (A) the manufacturer does not otherwise
25 manufacture, distribute, or sell motor vehicles as
26 defined under Section 1-217 of the Illinois Vehicle

1 Code;

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

4 (C) the manufacturer complies with all obligations
5 owed to dealers that are not owned, operated, or
6 controlled by the manufacturer, including, but not
7 limited to those obligations arising pursuant to
8 Section 6;

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

19 (E) the manufacturer does not require that
20 warranty repair work be performed by a
21 manufacturer-owned repair facility and the
22 manufacturer provides any dealer that has an agreement
23 with the manufacturer to sell and perform warranty
24 repairs on the manufacturer's engines the opportunity
25 to perform warranty repairs on those engines,
26 regardless of whether the dealer sold the truck into

1 which the engine was installed.

2 (g) Notwithstanding the terms, provisions, or conditions
3 of any agreement or waiver, it shall be deemed a violation for
4 a manufacturer, a distributor, a wholesaler, a distributor
5 branch or division, a factory branch or division, or a
6 wholesale branch or division, or officer, agent or other
7 representative thereof, to directly or indirectly condition
8 the awarding of a franchise to a prospective new motor vehicle
9 dealer, the addition of a line make or franchise to an existing
10 dealer, the renewal of a franchise of an existing dealer, the
11 approval of the relocation of an existing dealer's facility,
12 or the approval of the sale or transfer of the ownership of a
13 franchise on the willingness of a dealer, proposed new dealer,
14 or owner of an interest in the dealership facility to enter
15 into a site control agreement or exclusive use agreement
16 unless separate and reasonable consideration was offered and
17 accepted for that agreement.

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

1 control agreement" and "exclusive use agreement" also include
2 a manufacturer restricting the ability of a dealer to
3 transfer, sell, or lease the dealership premises by right of
4 first refusal to purchase or lease, option to purchase, or
5 option to lease if the transfer, sale, or lease of the
6 dealership premises is to a person who is an immediate family
7 member of the dealer. For the purposes of this subsection (g),
8 "immediate family member" means a spouse, parent, son,
9 daughter, son-in-law, daughter-in-law, brother, and sister.

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

26 Any provision contained in any agreement entered into on

1 or after November 25, 2009 (the effective date of Public Act
2 96-824) that is inconsistent with the provisions of this
3 subsection (g) shall be voidable at the election of the
4 affected dealer, prospective dealer, or owner of an interest
5 in the dealership facility.

6 (h) For purposes of this subsection:

7 "Successor manufacturer" means any motor vehicle
8 manufacturer that, on or after January 1, 2009, acquires,
9 succeeds to, or assumes any part of the business of another
10 manufacturer, referred to as the "predecessor manufacturer",
11 as the result of any of the following:

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

18 (ii) The termination, suspension, or cessation of a
19 part or all of the business operations of the predecessor
20 manufacturer.

21 (iii) The discontinuance of the sale of the product
22 line.

23 (iv) A change in distribution system by the
24 predecessor manufacturer, whether through a change in
25 distributor or the predecessor manufacturer's decision to
26 cease conducting business through a distributor

1 altogether.

2 "Former Franchisee" means a new motor vehicle dealer that
3 has entered into a franchise with a predecessor manufacturer
4 and that has either:

5 (i) entered into a termination agreement or deferred
6 termination agreement with a predecessor or successor
7 manufacturer related to such franchise; or

8 (ii) has had such franchise canceled, terminated,
9 nonrenewed, noncontinued, rejected, nonassumed, or
10 otherwise ended.

11 For a period of 3 years from: (i) the date that a successor
12 manufacturer acquires, succeeds to, or assumes any part of the
13 business of a predecessor manufacturer; (ii) the last day that
14 a former franchisee is authorized to remain in business as a
15 franchised dealer with respect to a particular franchise under
16 a termination agreement or deferred termination agreement with
17 a predecessor or successor manufacturer; (iii) the last day
18 that a former franchisee that was cancelled, terminated,
19 nonrenewed, noncontinued, rejected, nonassumed, or otherwise
20 ended by a predecessor or successor manufacturer is authorized
21 to remain in business as a franchised dealer with respect to a
22 particular franchise; or (iv) November 25, 2009 (the effective
23 date of Public Act 96-824), whichever is latest, it shall be
24 unlawful for such successor manufacturer to enter into a same
25 line make franchise with any person or to permit the
26 relocation of any existing same line make franchise, for a

1 line make of the predecessor manufacturer that would be
2 located or relocated within the relevant market area of a
3 former franchisee who owned or leased a dealership facility in
4 that relevant market area without first offering the
5 additional or relocated franchise to the former franchisee, or
6 the designated successor of such former franchisee in the
7 event the former franchisee is deceased or a person with a
8 disability, at no cost and without any requirements or
9 restrictions other than those imposed generally on the
10 manufacturer's other franchisees at that time, unless one of
11 the following applies:

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

19 (2) The successor manufacturer has paid the former
20 franchisee, or the designated successor of such former
21 franchisee in the event the former franchisee is deceased
22 or a person with a disability, the fair market value of the
23 former franchisee's franchise on (i) the date the
24 franchiser announces the action which results in the
25 termination, cancellation, or nonrenewal; or (ii) the date
26 the action which results in termination, cancellation, or

1 nonrenewal first became general knowledge; or (iii) the
2 day 12 months prior to the date on which the notice of
3 termination, cancellation, or nonrenewal is issued,
4 whichever amount is higher. Payment is due within 90 days
5 of the effective date of the termination, cancellation, or
6 nonrenewal. If the termination, cancellation, or
7 nonrenewal is due to a manufacturer's change in
8 distributors, the manufacturer may avoid paying fair
9 market value to the dealer if the new distributor or the
10 manufacturer offers the dealer a franchise agreement with
11 terms acceptable to the dealer.

12 (3) The successor manufacturer proves that it would
13 have had good cause to terminate the franchise agreement
14 of the former franchisee, or the successor of the former
15 franchisee under item (e)(10) in the event that the former
16 franchisee is deceased or a person with a disability. The
17 determination of whether the successor manufacturer would
18 have had good cause to terminate the franchise agreement
19 of the former franchisee, or the successor of the former
20 franchisee, shall be made by the Board under subsection
21 (d) of Section 12. A successor manufacturer that seeks to
22 assert that it would have had good cause to terminate a
23 former franchisee, or the successor of the former
24 franchisee, must file a petition seeking a hearing on this
25 issue before the Board and shall have the burden of
26 proving that it would have had good cause to terminate the

1 former franchisee or the successor of the former
2 franchisee. No successor dealer, other than the former
3 franchisee, may be appointed or franchised by the
4 successor manufacturer within the relevant market area of
5 the former franchisee until the Board has held a hearing
6 and rendered a determination on the issue of whether the
7 successor manufacturer would have had good cause to
8 terminate the former franchisee.

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

19 (Source: P.A. 99-143, eff. 7-27-15; 99-844, eff. 8-19-16;
20 100-201, eff. 8-18-17; 100-308, eff. 8-24-17; 100-863, eff.
21 8-14-18.)