



**93RD GENERAL ASSEMBLY**

**State of Illinois**

**2003 and 2004**

**HB4083**

Introduced 1/15/2004, by Maria Antonia Berrios

**SYNOPSIS AS INTRODUCED:**

New Act

30 ILCS 105/5.625 new

35 ILCS 120/6

from Ch. 120, par. 445

625 ILCS 5/5-104.2

625 ILCS 5/5-501

from Ch. 95 1/2, par. 5-501

815 ILCS 380/8

from Ch. 121 1/2, par. 1208

Creates the New Vehicle Buyer Protection Act of 2004. Provides that qualified third-party dispute resolution processes may be used to resolve certain disputes between certain new vehicle buyers and manufacturers concerning a nonconformity that substantially impairs the use, value, or safety of a new vehicle. Provides that, if a qualified third-party dispute resolution process does not exist, or the new vehicle buyer is dissatisfied with that third-party decision, or the manufacturer or its agent does not fulfill the terms of a decision after it is accepted by the buyer, the buyer may: (i) assert a presumption that a reasonable number of attempts have been made to conform the vehicle to the applicable express warranties in accordance with criteria set forth in the Act and (ii) seek replacement of the vehicle or restitution for the price of the vehicle and damages, attorney's fees, costs, and a civil penalty. Provides that no person may sell, lease, or transfer a motor vehicle that was returned to a manufacturer under the Act or a similar law of any other state unless the vehicle's nonconformity is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity, except as otherwise specified. Provides that the Attorney General shall establish a program for certifying, reviewing, and decertifying third-party dispute resolution processes established by new vehicle manufacturers or their agents. Provides that the Secretary of State may suspend the license of a manufacturer or distributor for its failure to honor a decision of a qualified third-party dispute resolution process. Provides that the Secretary of State shall collect fees from manufacturers for the administration of the program and that the fees shall be deposited in the new Third-Party Dispute Resolution Fund. Applies to new motor vehicles beginning with the model year following the effective date of the Act. Amends the State Finance Act, the Retailers' Occupation Tax Act, and the Illinois Vehicle Code to conform to the new Act. Amends the existing New Vehicle Buyer Protection Act to provide that it does not apply to vehicles to which the new Act applies. Effective January 1, 2005.

LRB093 14547 WGH 40038 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning motor vehicles.

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

4 Article 1

5

6 Section 1-1. Short title. This Act may be cited as the New  
7 Vehicle Buyer Protection Act of 2004.

8 Article 5

9

10 Section 5-5. Definitions. As used in this Article:

11 "Nonconformity" means a nonconformity that substantially  
12 impairs the use, value, or safety of the new motor vehicle to  
13 the buyer or lessee.

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

1 of demonstrating qualities and characteristics common to  
2 vehicles of the same or similar model and type.

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

8 Section 5-10. Presumption. It shall be presumed that a  
9 reasonable number of attempts have been made to conform a new  
10 motor vehicle to the applicable express warranties if, within  
11 18 months from delivery to the buyer or 18,000 miles on the  
12 odometer of the vehicle, whichever occurs first, one or more of  
13 the following occurs:

14 (1) The same nonconformity results in a condition that  
15 is likely to cause death or serious bodily injury if the  
16 vehicle is driven and the nonconformity has been subject to  
17 repair 2 or more times by the manufacturer or its agents,  
18 and the buyer or lessee has at least once directly notified  
19 the manufacturer of the need for the repair of the  
20 nonconformity.

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

25 (3) The vehicle is out of service by reason of repair  
26 of nonconformities by the manufacturer or its agents for a  
27 cumulative total of more than 30 calendar days since  
28 delivery of the vehicle to the buyer. The 30-day limit  
29 shall be extended only if repairs cannot be performed due  
30 to conditions beyond the control of the manufacturer or its  
31 agents. The buyer shall be required to directly notify the  
32 manufacturer under subdivisions (1) and (2) only if the  
33 manufacturer has clearly and conspicuously disclosed to  
34 the buyer, with the warranty or the owner's manual, the  
35 provisions of this Act, including the requirement that the

1        buyer must notify the manufacturer directly under  
2        subdivisions (1) and (2). The notification, if required,  
3        shall be sent to the address, if any, specified clearly and  
4        conspicuously by the manufacturer in the warranty or  
5        owner's manual. This presumption shall be a rebuttable  
6        presumption affecting the burden of proof, and it may be  
7        asserted by the buyer in any civil action, including an  
8        action in small claims court, or other formal or informal  
9        proceeding.

10       Section 5-15. Assertion of presumption; qualified  
11       third-party dispute resolution process. If a qualified  
12       third-party dispute resolution process exists, and the buyer  
13       receives timely notification in writing of the availability of  
14       that qualified third-party dispute resolution process with a  
15       description of its operation and effect, the presumption in  
16       Section 5-10 may not be asserted by the buyer until after the  
17       buyer has initially resorted to the qualified third-party  
18       dispute resolution process as required in Section 5-20.  
19       Notification of the availability of the qualified third-party  
20       dispute resolution process is not timely if the buyer suffers  
21       any prejudice resulting from any delay in giving the  
22       notification. If a qualified third-party dispute resolution  
23       process does not exist, or if the buyer is dissatisfied with  
24       that third-party decision, or if the manufacturer or its agent  
25       neglects to promptly fulfill the terms of the qualified  
26       third-party dispute resolution process decision after the  
27       decision is accepted by the buyer, the buyer may assert the  
28       presumption provided in Section 5-10 in an action to enforce  
29       the buyer's rights under Section 5-30. The findings and  
30       decision of a qualified third-party dispute resolution process  
31       shall be admissible in evidence in the action without further  
32       foundation. Any period of limitation of actions under any  
33       federal or State law with respect to any person shall be  
34       extended for a period equal to the number of days between the  
35       date a complaint is filed with a third-party dispute resolution

1 process and the date of its decision or the date before which  
2 the manufacturer or its agent is required by the decision to  
3 fulfill its terms if the decision is accepted by the buyer,  
4 whichever occurs later.

5 Section 5-20. Elements of qualified third-party dispute  
6 resolution process. A qualified third-party dispute resolution  
7 process is one that does all of the following:

8 (1) Complies with the minimum requirements of the  
9 Federal Trade Commission for informal dispute settlement  
10 procedures as set forth in Part 703 of Title 16 of the Code  
11 of Federal Regulations.

12 (2) Renders decisions that are binding on the  
13 manufacturer if the buyer elects to accept the decision.

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

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

23 (5) Requires the manufacturer, when the process  
24 orders, under the terms of this Act, either that the  
25 nonconforming motor vehicle be replaced if the buyer  
26 consents to this remedy or that restitution be made to the  
27 buyer, to replace the motor vehicle or make restitution in  
28 accordance with Section 5-30.

29 (6) Provides, at the request of the arbitrator or a  
30 majority of the arbitration panel, for an inspection and  
31 written report on the condition of a nonconforming motor  
32 vehicle, at no cost to the buyer, by an automobile expert  
33 who is independent of the manufacturer.

34 (7) Takes into account, in rendering decisions, all  
35 legal and equitable factors, including, but not limited to,

1 the written warranty, the rights and remedies conferred in  
2 regulations of the Federal Trade Commission contained in  
3 Part 703 of Title 16 of the Code of Federal Regulations,  
4 Article 2 of the Uniform Commercial Code, this Act, and any  
5 other equitable considerations appropriate in the  
6 circumstances. Nothing in this Act requires that, to be  
7 certified as a qualified third-party dispute resolution  
8 process under this Section, decisions of the process must  
9 consider or provide remedies in the form of awards of  
10 punitive damages, attorney's fees, or consequential  
11 damages under Section 5-35 including, but not limited to,  
12 reasonable repair, towing, and rental car costs actually  
13 incurred by the buyer.

14 (8) Requires that no arbitrator deciding a dispute may  
15 be a party to the dispute and that no other person,  
16 including an employee, agent, or dealer for the  
17 manufacturer, may be allowed to participate substantively  
18 in the merits of any dispute with the arbitrator unless the  
19 buyer is also allowed to participate. Nothing in this  
20 subdivision (8) prohibits any member of an arbitration  
21 board from deciding a dispute.

22 (9) Obtains and maintains certification under Article  
23 10.

24 Section 5-25. Sale of transferred vehicles.

25 (a) Except as provided in subsection (b), no person may  
26 sell, either at wholesale or retail, lease, or transfer a motor  
27 vehicle transferred by a buyer or lessee to a manufacturer  
28 under Section 5-30 or a similar law of any other state, unless  
29 the nature of the nonconformity experienced by the original  
30 buyer or lessee is clearly and conspicuously disclosed to the  
31 prospective buyer, lessee, or transferee, the nonconformity is  
32 corrected, and the manufacturer warrants to the new buyer,  
33 lessee, or transferee in writing for a period of one year that  
34 the motor vehicle is free of that nonconformity.

35 (b) Except for the requirement that the nature of the

1 nonconformity be disclosed to the transferee, subsection (a)  
2 does not apply to the transfer of a motor vehicle to an  
3 educational institution if the purpose of the transfer is to  
4 make the motor vehicle available for use in automotive repair  
5 courses.

6 Section 5-30. Replacement or restitution.

7 (a) If the manufacturer or its representative in this State  
8 is unable to service or repair a new motor vehicle to conform  
9 to the applicable express warranties after a reasonable number  
10 of attempts, the manufacturer shall either promptly replace the  
11 new motor vehicle in accordance with subsection (b) or promptly  
12 make restitution to the buyer in accordance with subsection  
13 (c). However, the buyer may elect restitution in lieu of  
14 replacement, and in no event shall the buyer be required by the  
15 manufacturer to accept a replacement vehicle.

16 (b) In the case of replacement, the manufacturer shall  
17 replace the buyer's vehicle with a new motor vehicle  
18 substantially identical to the vehicle replaced. The  
19 replacement vehicle shall be accompanied by all express and  
20 implied warranties that normally accompany new motor vehicles  
21 of that specific kind. The manufacturer also shall pay for, or  
22 to, the buyer the amount of any use tax, license fees,  
23 registration fees, and other official fees which the buyer is  
24 obligated to pay in connection with the replacement, plus any  
25 incidental damages to which the buyer is entitled under Section  
26 5-35, including, but not limited to, reasonable repair, towing,  
27 and rental car costs actually incurred by the buyer.

28 (c) In the case of restitution, the manufacturer shall make  
29 restitution in an amount equal to the actual price paid or  
30 payable by the buyer, including any charges for transportation  
31 and manufacturer-installed options, but excluding  
32 nonmanufacturer items installed by a dealer or the buyer, and  
33 including any collateral charges such as use tax, license fees,  
34 registration fees, and other official fees, plus any incidental  
35 damages to which the buyer is entitled under Section 5-35,

1 including, but not limited to, reasonable repair, towing, and  
2 rental car costs actually incurred by the buyer.

3 (d) When the manufacturer replaces the new motor vehicle  
4 under subsection (b), the buyer shall only be liable to pay the  
5 manufacturer an amount directly attributable to use by the  
6 buyer of the replaced vehicle before the buyer first delivered  
7 the vehicle to the manufacturer or distributor, or its  
8 authorized service and repair facility for correction of the  
9 problem that gave rise to the nonconformity. When restitution  
10 is made under subsection (c), the amount to be paid by the  
11 manufacturer to the buyer may be reduced by the manufacturer by  
12 that amount directly attributable to use by the buyer before  
13 the buyer first delivered the vehicle to the manufacturer or  
14 distributor, or its authorized service and repair facility for  
15 correction of the problem that gave rise to the nonconformity.  
16 The amount directly attributable to use by a buyer shall be  
17 determined by multiplying the actual price of the new motor  
18 vehicle paid or payable by the buyer, including any charges for  
19 transportation and manufacturer-installed options, by a  
20 fraction having as its denominator 120,000 and having as its  
21 numerator the number of miles traveled by the new motor vehicle  
22 before the buyer first delivered the vehicle to the  
23 manufacturer or distributor, or its authorized service and  
24 repair facility for correction of the problem that gave rise to  
25 the nonconformity. Nothing in this Section in any way limits  
26 the rights or remedies available to the buyer under any other  
27 law.

28 Section 5-35. Damages; attorney's fees and costs; civil  
29 penalty.

30 (a) Except as otherwise provided in this Section, if the  
31 buyer establishes a violation of Section 5-30, the buyer shall  
32 recover damages and reasonable attorney's fees and costs, and  
33 may recover a civil penalty of up to 2 times the amount of  
34 damages.

35 (b) If the manufacturer maintains a qualified third-party



1 dispute resolution process which substantially complies with  
2 this Act, the manufacturer shall not be liable for any civil  
3 penalty under this Section.

4 (c) After the occurrence of the events giving rise to the  
5 presumption established in Section 5-30, the buyer may serve  
6 upon the manufacturer a written notice requesting that the  
7 manufacturer comply with Section 5-30. If the buyer fails to  
8 serve the notice, the manufacturer is not liable for a civil  
9 penalty under this Section.

10 (d) If the buyer serves the notice described in subsection  
11 (c) and the manufacturer complies with Section 5-30 within 30  
12 days of the service of that notice, the manufacturer is not  
13 liable for a civil penalty under this Section.

14 Article 10

15

16 Section 10-5. Definitions. As used in this Article, unless  
17 the context requires otherwise:

18 Except as otherwise provided in Section 10-30, "new motor  
19 vehicle" means a new motor vehicle as defined in Article 5.

20 "Manufacturer" a manufacturer or distributor as defined in  
21 Section 5-109 of the Illinois Vehicle Code.

22 "Qualified third party dispute resolution process" means a  
23 third party dispute resolution process which operates in  
24 compliance with Section 5-20 and this Article and which has  
25 been certified by the Attorney General under this Article.

26 Section 10-10. Program for certifying third-party dispute  
27 resolution process. The Attorney General shall establish a  
28 program for certifying each third-party dispute resolution  
29 process used for the arbitration of disputes under Section  
30 5-15. In establishing the program, the Attorney General shall  
31 do all of the following:

32 (1) Prescribe and provide forms to be used to apply for  
33 certification under this Article.

1           (2) Establish a set of minimum standards which shall be  
2 used to determine whether a third-party dispute resolution  
3 process is in substantial compliance with Section 5-20 and  
4 this Article.

5           (3) Prescribe the information which each manufacturer  
6 or other entity that operates a third-party dispute  
7 resolution process shall provide the Attorney General in  
8 the application for certification. In prescribing the  
9 information to accompany the application for  
10 certification, the Attorney General shall require the  
11 manufacturer or other entity to provide only that  
12 information which the Attorney General finds is reasonably  
13 necessary to enable the Attorney General to determine  
14 whether the third-party dispute resolution process is in  
15 substantial compliance with Section 5-20 and this Article.

16           (4) Prescribe the information that each qualified  
17 third-party dispute resolution process shall provide the  
18 Attorney General, and the time intervals at which the  
19 information shall be required, to enable the Attorney  
20 General to determine whether the qualified third-party  
21 dispute resolution process continues to operate in  
22 substantial compliance with Section 5-20 and this Article.

23           Section 10-15. Establishment of qualified third-party  
24 dispute resolution process.

25           (a) Each manufacturer may establish, or otherwise make  
26 available to buyers or lessees of new motor vehicles, a  
27 qualified third-party dispute resolution process for the  
28 resolution of disputes under Section 5-15. A manufacturer that  
29 itself operates the third-party dispute resolution process  
30 shall apply to the Attorney General for certification of that  
31 process. If the manufacturer makes the third-party dispute  
32 resolution process available to buyers or lessees of new motor  
33 vehicles through contract or other arrangement with another  
34 entity, that entity shall apply to the Attorney General for  
35 certification. An entity that operates a third-party dispute

1 resolution process for more than one manufacturer shall make a  
2 separate application for certification for each manufacturer  
3 that uses that entity's third-party dispute resolution  
4 process. The application for certification shall be  
5 accompanied by the information prescribed by the Attorney  
6 General.

7 (b) The Attorney General shall review the application and  
8 accompanying information and, after conducting an onsite  
9 inspection, shall determine whether the third-party dispute  
10 resolution process is in substantial compliance with Section  
11 5-20 and this Article. If the Attorney General determines that  
12 the process is in substantial compliance, the Attorney General  
13 shall certify the process. If the Attorney General determines  
14 that the process is not in substantial compliance, the Attorney  
15 General shall deny certification and shall state, in writing,  
16 the reasons for denial and the modifications in the operation  
17 of the process that are required in order for the process to be  
18 certified.

19 (c) The Attorney General shall make a final determination  
20 whether to certify a third-party dispute resolution process or  
21 to deny certification not later than 90 calendar days following  
22 the date the Attorney General accepts the application for  
23 certification as complete.

24 Section 10-20. Review.

25 (a) The Attorney General, in accordance with the time  
26 intervals set forth in subdivision (4) of Section 10-10, but at  
27 least once annually, shall review the operation and performance  
28 of each qualified third-party dispute resolution process and  
29 determine, using the information provided the Attorney General  
30 under subdivision (4) of Section 10-10 and the monitoring and  
31 inspection information described in subsection (c) of Section  
32 10-25, whether the process is operating in substantial  
33 compliance with Section 5-20 and this Article. If the Attorney  
34 General determines that the process is in substantial  
35 compliance, the certification shall remain in effect.

1 (b) If the Attorney General determines that the process is  
2 not in substantial compliance with Section 5-20 or this  
3 Article, the Attorney General shall issue a notice of  
4 decertification to the entity which operates the process and  
5 shall send a copy of that notice to any manufacturer affected  
6 by the decertification. The notice of decertification shall  
7 state the reasons for the issuance of the notice and prescribe  
8 the modifications in the operation of the process that are  
9 required for the process to retain its certification.

10 (c) A notice of decertification shall take effect 180  
11 calendar days following the date the notice is served on the  
12 manufacturer or other entity which uses the process that the  
13 Attorney General has determined is not in substantial  
14 compliance with Section 5-20 or this Article. The Attorney  
15 General shall withdraw the notice of decertification before its  
16 effective date if the Attorney General determines, after a  
17 public hearing, that the manufacturer or other entity which  
18 uses the process has made the modifications in the operation of  
19 the process required in the notice of decertification and is in  
20 substantial compliance with Section 5-20 and this Article.

21 Section 10-25. Duties of Attorney General.

22 (a) In addition to any other requirements of this Article,  
23 the Attorney General shall do all of the following:

24 (1) Establish procedures to assist owners or lessees of  
25 new motor vehicles who have complaints regarding the  
26 operation of a qualified third-party dispute resolution  
27 process.

28 (2) Establish methods for measuring customer  
29 satisfaction and to identify violations of this Article,  
30 which shall include an annual random postcard or telephone  
31 survey by the Attorney General of the customers of each  
32 qualified third-party dispute resolution process.

33 (3) Monitor and inspect, on a regular basis, qualified  
34 third-party dispute resolution processes to determine  
35 whether they continue to meet the standards for

1 certification. Monitoring and inspection shall include,  
2 but not be limited to, all of the following:

3 (A) Onsite inspections of each qualified  
4 third-party dispute resolution process not less  
5 frequently than twice annually.

6 (B) Investigation of complaints from consumers  
7 regarding the operation of qualified third-party  
8 dispute resolution processes and analyses of  
9 representative samples of complaints against each  
10 process.

11 (C) Analyses of the annual surveys required by  
12 subdivision (2).

13 (4) Notify the Secretary of State of the failure of a  
14 manufacturer to honor a decision of a qualified third-party  
15 dispute resolution process to enable the Secretary of State  
16 to take appropriate enforcement action against the  
17 manufacturer under Section 5-501 of the Illinois Vehicle  
18 Code.

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

25 (6) Adopt rules as necessary and appropriate to  
26 implement this Article and Section 5-20.

27 (b) Protection of the public shall be the highest priority  
28 for the Attorney General in exercising its certification,  
29 regulatory, and disciplinary functions. Whenever the  
30 protection of the public is inconsistent with other interests  
31 sought to be promoted, the protection of the public shall be  
32 paramount.

33 Section 10-30. Fees.

34 (a) The Secretary of State shall, in accordance with this  
35 Section, administer the collection of fees for the purposes of

1 fully funding the administration of this Article.

2 (b) Fees collected under this Section shall be deposited in  
3 the Third-Party Dispute Resolution Fund, a special fund which  
4 is created in the State treasury and shall be used, subject to  
5 appropriation, exclusively to pay the expenses incurred by the  
6 Attorney General in administering this Article and the expenses  
7 incurred by the Secretary of State in collecting the fees.

8 (c) Beginning July 1, 2006, and on or before May 1 of each  
9 calendar year thereafter, every manufacturer shall file with  
10 the Secretary of State a statement of the number of motor  
11 vehicles sold, leased, or otherwise distributed by or for the  
12 manufacturer in this State during the preceding calendar year,  
13 and shall, upon written notice delivered to the manufacturer by  
14 certified mail, return receipt requested, pay to the Secretary  
15 of State a fee, not to exceed \$1 for each motor vehicle sold,  
16 leased, or distributed by or for the manufacturer in this State  
17 during the preceding calendar year. Not more than \$1 shall be  
18 charged, collected, or received from any one or more  
19 manufacturers under this subsection (c) with respect to the  
20 same motor vehicle.

21 (d) The fee required by subsection (c) is due and payable  
22 not later than 30 days after the manufacturer has received  
23 notice of the amount due and is delinquent after that time. A  
24 penalty of 10% of the amount delinquent shall be added to that  
25 amount if the delinquency continues for more than 30 days. If a  
26 manufacturer fails to file the statement required by  
27 subdivision (b) by the date specified, the Secretary of State  
28 shall assess the amount due from the manufacturer by using as  
29 the number of motor vehicles sold, leased, or otherwise  
30 distributed by or for the manufacturer in this State during the  
31 preceding calendar year the total number of new registrations  
32 of all motor vehicles sold, leased, or otherwise distributed by  
33 or for the manufacturer during the preceding calendar year.

34 (e) On or before February 1 of each year, the Attorney  
35 General shall notify the Secretary of State of the dollar  
36 amount necessary to fully fund the program established by this

1 Article during the following fiscal year. The Secretary of  
2 State shall use this information in calculating the amounts of  
3 the fees to be collected from manufacturers under this Section.

4 (f) As used in this Section, "motor vehicle" means a new  
5 passenger or commercial motor vehicle of a kind that is  
6 required to be registered under the Illinois Vehicle Code, but  
7 "motor vehicle" does not include a motorcycle, a motor home, or  
8 any vehicle whose gross weight exceeds 10,000 pounds.

9 (g) The Secretary of State may adopt rules to implement  
10 this Section. The rules shall include, at a minimum, a formula  
11 for calculating the fee for each motor vehicle and the total  
12 amount of fees to be collected from each manufacturer.

13 Article 80

14

15 Section 80-5. Applicability. This Act applies to new motor  
16 vehicles beginning with the model year following the effective  
17 date of this Act.

18 Article 90

19

20 Section 90-5. The State Finance Act is amended by adding  
21 Section 5.625 as follows:

22 (30 ILCS 105/5.625 new)

23 Sec. 5.625. The Third-Party Dispute Resolution Fund.

24 Section 90-7. The Retailers' Occupation Tax Act is amended  
25 by changing Section 6 as follows:

26 (35 ILCS 120/6) (from Ch. 120, par. 445)

27 Sec. 6. Credit memorandum or refund. If it appears, after  
28 claim therefor filed with the Department, that an amount of tax  
29 or penalty or interest has been paid which was not due under

1 this Act, whether as the result of a mistake of fact or an  
2 error of law, except as hereinafter provided, then the  
3 Department shall issue a credit memorandum or refund to the  
4 person who made the erroneous payment or, if that person died  
5 or became a person under legal disability, to his or her legal  
6 representative, as such. For purposes of this Section, the tax  
7 is deemed to be erroneously paid by a retailer when the  
8 manufacturer of a motor vehicle sold by the retailer accepts  
9 the return of that automobile and refunds to the purchaser the  
10 selling price of that vehicle as provided in the New Vehicle  
11 Buyer Protection Act or the New Vehicle Buyer Protection Act of  
12 2004. When a motor vehicle is returned for a refund of the  
13 purchase price under the New Vehicle Buyer Protection Act or  
14 the New Vehicle Buyer Protection Act of 2004, the Department  
15 shall issue a credit memorandum or a refund for the amount of  
16 tax paid by the retailer under this Act attributable to the  
17 initial sale of that vehicle. Claims submitted by the retailer  
18 are subject to the same restrictions and procedures provided  
19 for in this Act. If it is determined that the Department should  
20 issue a credit memorandum or refund, the Department may first  
21 apply the amount thereof against any tax or penalty or interest  
22 due or to become due under this Act or under the Use Tax Act,  
23 the Service Occupation Tax Act, the Service Use Tax Act, any  
24 local occupation or use tax administered by the Department,  
25 Section 4 of the Water Commission Act of 1985, subsections (b),  
26 (c) and (d) of Section 5.01 of the Local Mass Transit District  
27 Act, or subsections (e), (f) and (g) of Section 4.03 of the  
28 Regional Transportation Authority Act, from the person who made  
29 the erroneous payment. If no tax or penalty or interest is due  
30 and no proceeding is pending to determine whether such person  
31 is indebted to the Department for tax or penalty or interest,  
32 the credit memorandum or refund shall be issued to the  
33 claimant; or (in the case of a credit memorandum) the credit  
34 memorandum may be assigned and set over by the lawful holder  
35 thereof, subject to reasonable rules of the Department, to any  
36 other person who is subject to this Act, the Use Tax Act, the



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

25 No claim may be allowed for any amount paid to the  
26 Department, whether paid voluntarily or involuntarily, if paid  
27 in total or partial liquidation of an assessment which had  
28 become final before the claim for credit or refund to recover  
29 the amount so paid is filed with the Department, or if paid in  
30 total or partial liquidation of a judgment or order of court.  
31 No credit may be allowed or refund made for any amount paid by  
32 or collected from any claimant unless it appears (a) that the  
33 claimant bore the burden of such amount and has not been  
34 relieved thereof nor reimbursed therefor and has not shifted  
35 such burden directly or indirectly through inclusion of such  
36 amount in the price of the tangible personal property sold by

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

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

22 In case the Department determines that the claimant is  
23 entitled to a refund, such refund shall be made only from such  
24 appropriation as may be available for that purpose. If it  
25 appears unlikely that the amount appropriated would permit  
26 everyone having a claim allowed during the period covered by  
27 such appropriation to elect to receive a cash refund, the  
28 Department, by rule or regulation, shall provide for the  
29 payment of refunds in hardship cases and shall define what  
30 types of cases qualify as hardship cases.

31 If a retailer who has failed to pay retailers' occupation  
32 tax on gross receipts from retail sales is required by the  
33 Department to pay such tax, such retailer, without filing any  
34 formal claim with the Department, shall be allowed to take  
35 credit against such retailers' occupation tax liability to the  
36 extent, if any, to which such retailer has paid an amount

1 equivalent to retailers' occupation tax or has paid use tax in  
2 error to his or her vendor or vendors of the same tangible  
3 personal property which such retailer bought for resale and did  
4 not first use before selling it, and no penalty or interest  
5 shall be charged to such retailer on the amount of such credit.  
6 However, when such credit is allowed to the retailer by the  
7 Department, the vendor is precluded from refunding any of that  
8 tax to the retailer and filing a claim for credit or refund  
9 with respect thereto with the Department. The provisions of  
10 this amendatory Act shall be applied retroactively, regardless  
11 of the date of the transaction.

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

13 Section 90-10. The Illinois Vehicle Code is amended by  
14 changing Sections 5-104.2 and 5-501 as follows:

15 (625 ILCS 5/5-104.2)

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

17 (a) Every manufacturer shall be prohibited from reselling  
18 any motor vehicle that has been finally ordered, determined, or  
19 adjudicated as having a nonconformity under the New Vehicle  
20 Buyer Protection Act or a similar law of any state, territory,  
21 or country, and that the manufacturer repurchased or replaced  
22 because of the nonconformity, unless the manufacturer has  
23 corrected the nonconformity and issues a disclosure statement  
24 prior to resale stating that the vehicle was repurchased or  
25 replaced under the New Vehicle Buyer Protection Act or similar  
26 law of any other state, territory, or country; identifying the  
27 nonconformity; and warranting that the nonconformity has been  
28 corrected. The disclosure statement must accompany the vehicle  
29 through the first retail purchase.

30 (b) "Nonconformity" refers to a new vehicle's failure to  
31 conform to all express warranties applicable to the vehicle,  
32 which failure substantially impairs the use, market value, or  
33 safety of the vehicle.

34 (c) The disclosure statement referred to in subsection (a)

1 shall be in substantially the same form as below:

2 "IMPORTANT

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

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

17 (d) The sale, lease, or transfer of motor vehicles that  
18 have been determined to have a nonconformity under the New  
19 Vehicle Buyer Protection Act of 2004 shall be governed by that  
20 Act.

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

22 (625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

23 Sec. 5-501. Denial, suspension or revocation or  
24 cancellation of a license. (a) The license of a person issued  
25 under this Chapter may be denied, revoked or suspended if the  
26 Secretary of State finds that the applicant, or the officer,  
27 director, shareholder having a ten percent or greater ownership  
28 interest in the corporation, owner, partner, trustee, manager,  
29 employee or the licensee has:

30 1. Violated this Act;

31 2. Made any material misrepresentation to the Secretary of  
32 State in connection with an application for a license, junking  
33 certificate, salvage certificate, title or registration;

34 3. Committed a fraudulent act in connection with selling,  
35 bartering, exchanging, offering for sale or otherwise dealing

1 in vehicles, chassis, essential parts, or vehicle shells;

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

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

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

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

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

18 a. the "Consumer Finance Act";

19 b. the "Consumer Installment Loan Act";

20 c. the "Retail Installment Sales Act";

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

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

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

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

29 h. the "Consumer Fraud Act";

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

34 10. Converted an abandoned vehicle;

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

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

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

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

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

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

11           17. Acted in the capacity of a person licensed or acted as  
12 a licensee under this Chapter without having a license  
13 therefor;

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

17           19. Willfully violated the terms of any warranty  
18 responsibilities as set forth in the New Vehicle Buyer  
19 Protection Act of 2004.

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

25           1. Failure to make a tax return;

26           2. The filing of a fraudulent return;

27           3. Failure to pay all or part of any tax or penalty finally  
28 determined to be due;

29           4. Failure to comply with the bonding requirements of the  
30 "Retailers' Occupation Tax Act".

31           (c) Cancellation of a license.

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

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

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

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

13 2. The license of a person issued under this Chapter may be  
14 cancelled without a hearing when the Secretary of State is  
15 notified that the applicant, or any officer, director,  
16 shareholder having a 10 per cent or greater ownership interest  
17 in the corporation, owner, partner, trustee, manager, employee  
18 or member of the applicant or the licensee has been convicted  
19 of any felony involving the selling, bartering, exchanging,  
20 offering for sale, or otherwise dealing in vehicles, chassis,  
21 essential parts, vehicle shells, or ownership documents  
22 relating to any of the above items.

23 (Source: P.A. 86-820.)

24 Section 90-15. The New Vehicle Buyer Protection Act is  
25 amended by changing Section 8 as follows:

26 (815 ILCS 380/8) (from Ch. 121 1/2, par. 1208)

27 Sec. 8. This Act shall apply to motor vehicles beginning  
28 with the model year following the effective date of this Act,  
29 except that this Act does not apply to any motor vehicle to  
30 which the New Vehicle Buyer Protection Act of 2004 applies.

31 (Source: P.A. 83-768.)

32 Article 99

33

1           Section 99-5. Effective date.   This Act takes effect on  
2   January 1, 2005.