

1 AN ACT concerning transportation.

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

4 Section 5. The Illinois Vehicle Code is amended by changing
5 Section 5-501 as follows:

6 (625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

7 Sec. 5-501. Denial, suspension or revocation or
8 cancellation of a license. (a) The license of a person issued
9 under this Chapter may be denied, revoked or suspended if the
10 Secretary of State finds that the applicant, or the officer,
11 director, shareholder having a ten percent or greater ownership
12 interest in the corporation, owner, partner, trustee, manager,
13 employee or the licensee has:

14 1. Violated this Act;

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

18 3. Committed a fraudulent act in connection with selling,
19 bartering, exchanging, offering for sale or otherwise dealing
20 in vehicles, chassis, essential parts, or vehicle shells;

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

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

26 6. Failed to file or produce for the Secretary of State any
27 application, report, document or other pertinent books,
28 records, documents, letters, contracts, required to be filed or
29 produced under this Code or any rule or regulation made by the
30 Secretary of State pursuant to this Code;

31 7. Previously had, within 3 years, such a license denied,
32 suspended, revoked, or cancelled under the provisions of

1 subsection (c) (2) of this Section;

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

5 a. the "Consumer Finance Act";

6 b. the "Consumer Installment Loan Act";

7 c. the "Retail Installment Sales Act";

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

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

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

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

16 h. the "Consumer Fraud Act";

17 9. Failed to pay any fees or taxes due under this Act, or
18 has failed to transmit any fees or taxes received by him for
19 transmittal by him to the Secretary of State or the State of
20 Illinois;

21 10. Converted an abandoned vehicle;

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

24 12. Violated the provisions of Chapter 5 of this Act, as
25 amended;

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

28 14. Violated the provisions of Chapter 3 of this Act, as
29 amended;

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

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

34 17. Acted in the capacity of a person licensed or acted as
35 a licensee under this Chapter without having a license
36 therefor;

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

4 (b) In addition to other grounds specified in this Chapter,
5 the Secretary of State, on complaint of the Department of
6 Revenue, shall refuse the issuance or ~~of~~ renewal of a license,
7 or suspend or revoke such license, for any of the following
8 violations of the "Retailers' Occupation Tax Act":

- 9 1. Failure to make a tax return;
- 10 2. The filing of a fraudulent return;
- 11 3. Failure to pay all or part of any tax or penalty finally
12 determined to be due;
- 13 4. Failure to comply with the bonding requirements of the
14 "Retailers' Occupation Tax Act".

15 (b-1) In addition to other grounds specified in this
16 Chapter, the Secretary of State, on complaint of the Motor
17 Vehicle Review Board, shall refuse the issuance or renewal of a
18 license, or suspend or revoke that license, if costs or fees
19 assessed under Section 29 or Section 30 of the Motor Vehicle
20 Franchise Act have remained unpaid for a period in excess of 90
21 days after the licensee received from the Motor Vehicle Board a
22 second notice and demand for the costs or fees. The Motor
23 Vehicle Review Board must send the licensee written notice and
24 demand for payment of the fees or costs at least 2 times, and
25 the second notice and demand must be sent by certified mail.

26 (c) Cancellation of a license.

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

30 A. When a license is voluntarily surrendered, by the
31 licensed person; or

32 B. If the business enterprise is a sole proprietorship,
33 which is not a franchised dealership, when the sole proprietor
34 dies or is imprisoned for any period of time exceeding 30 days;
35 or

36 C. If the license was issued to the wrong person or

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

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

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

19 Section 10. The Motor Vehicle Franchise Act is amended by
20 changing Section 4 as follows:

21 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

22 Sec. 4. Unfair competition and practices.

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

29 (b) It shall be deemed a violation for any manufacturer,
30 factory branch, factory representative, distributor or
31 wholesaler, distributor branch, distributor representative or
32 motor vehicle dealer to engage in any action with respect to a
33 franchise which is arbitrary, in bad faith or unconscionable
34 and which causes damage to any of the parties or to the public.

1 (c) It shall be deemed a violation for a manufacturer, a
2 distributor, a wholesaler, a distributor branch or division, a
3 factory branch or division, or a wholesale branch or division,
4 or officer, agent or other representative thereof, to coerce,
5 or attempt to coerce, any motor vehicle dealer:

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

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

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

24 (d) It shall be deemed a violation for a manufacturer, a
25 distributor, a wholesaler, a distributor branch or division, or
26 officer, agent or other representative thereof:

27 (1) to adopt, change, establish or implement a plan or
28 system for the allocation and distribution of new motor
29 vehicles to motor vehicle dealers which is arbitrary or
30 capricious or to modify an existing plan so as to cause the
31 same to be arbitrary or capricious;

32 (2) to fail or refuse to advise or disclose to any
33 motor vehicle dealer having a franchise or selling
34 agreement, upon written request therefor, the basis upon
35 which new motor vehicles of the same line make are
36 allocated or distributed to motor vehicle dealers in the

1 State and the basis upon which the current allocation or
2 distribution is being made or will be made to such motor
3 vehicle dealer;

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

23 (4) to coerce, or attempt to coerce, any motor vehicle
24 dealer to enter into any agreement with such manufacturer,
25 distributor, wholesaler, distributor branch or division,
26 factory branch or division, or wholesale branch or
27 division, or officer, agent or other representative
28 thereof, or to do any other act prejudicial to the dealer
29 by threatening to reduce his allocation of motor vehicles
30 or cancel any franchise or any selling agreement existing
31 between such manufacturer, distributor, wholesaler,
32 distributor branch or division, or factory branch or
33 division, or wholesale branch or division, and the dealer.
34 However, notice in good faith to any motor vehicle dealer
35 of the dealer's violation of any terms or provisions of
36 such franchise or selling agreement or of any law or

1 regulation applicable to the conduct of a motor vehicle
2 dealer shall not constitute a violation of this Act;

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

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

22 (A) If a manufacturer, distributor, wholesaler,
23 distributor branch or division, factory branch or
24 division or wholesale branch or division intends to
25 cancel or terminate a franchise or selling agreement or
26 intends not to extend or renew a franchise or selling
27 agreement on its expiration, it shall send a letter by
28 certified mail, return receipt requested, to the
29 affected franchisee at least 60 days before the
30 effective date of the proposed action, or not later
31 than 10 days before the proposed action when the reason
32 for the action is based upon either of the following:

33 (i) the business operations of the franchisee
34 have been abandoned or the franchisee has failed to
35 conduct customary sales and service operations
36 during customary business hours for at least 7

1 consecutive business days unless such closing is
2 due to an act of God, strike or labor difficulty or
3 other cause over which the franchisee has no
4 control; or

5 (ii) the conviction of or plea of nolo
6 contendere by the motor vehicle dealer or any
7 operator thereof in a court of competent
8 jurisdiction to an offense punishable by
9 imprisonment for more than two years.

10 Each notice of proposed action shall include a
11 detailed statement setting forth the specific grounds
12 for the proposed cancellation, termination, or refusal
13 to extend or renew and shall state that the dealer has
14 only 30 days from receipt of the notice to file with
15 the Motor Vehicle Review Board a written protest
16 against the proposed action.

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

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

1 action.

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

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

25 (D) Notwithstanding the terms, conditions, or
26 provisions of a franchise or selling agreement, the
27 following shall not constitute good cause for
28 cancelling or terminating or failing to extend or renew
29 the franchise or selling agreement: (i) the change of
30 ownership or executive management of the franchisee's
31 dealership; or (ii) the fact that the franchisee or
32 owner of an interest in the franchise owns, has an
33 investment in, participates in the management of, or
34 holds a license for the sale of the same or any other
35 line make of new motor vehicles.

36 Good cause shall exist to cancel, terminate or fail

1 to offer a renewal or replacement franchise or selling
2 agreement to all franchisees of a line make if the
3 manufacturer permanently discontinues the manufacture
4 or assembly of motor vehicles of such line make.

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

15 (7) notwithstanding the terms of any franchise
16 agreement, to fail to indemnify and hold harmless its
17 franchised dealers against any judgment or settlement for
18 damages, including, but not limited to, court costs, expert
19 witness fees, reasonable attorneys' fees of the new motor
20 vehicle dealer, and other expenses incurred in the
21 litigation, so long as such fees and costs are reasonable,
22 arising out of complaints, claims or lawsuits including,
23 but not limited to, strict liability, negligence,
24 misrepresentation, warranty (express or implied), or
25 rescission of the sale as defined in Section 2-608 of the
26 Uniform Commercial Code, to the extent that the judgment or
27 settlement relates to the alleged defective or negligent
28 manufacture, assembly or design of new motor vehicles,
29 parts or accessories or other functions by the
30 manufacturer, beyond the control of the dealer; provided
31 that, in order to provide an adequate defense, the
32 manufacturer receives notice of the filing of a complaint,
33 claim, or lawsuit within 60 days after the filing.

34 (e) It shall be deemed a violation for a manufacturer, a
35 distributor, a wholesaler, a distributor branch or division or
36 officer, agent or other representative thereof:

1 (1) to resort to or use any false or misleading
2 advertisement in connection with his business as such
3 manufacturer, distributor, wholesaler, distributor branch
4 or division or officer, agent or other representative
5 thereof;

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

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

30 (4) to prevent or attempt to prevent by contract or
31 otherwise any motor vehicle dealer or franchisee from
32 changing the executive management control of the motor
33 vehicle dealer or franchisee unless the franchiser, having
34 the burden of proof, proves that such change of executive
35 management will result in executive management control by a
36 person or persons who are not of good moral character or

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

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

26 (6) to refuse to give effect to or prevent or attempt
27 to prevent by contract or otherwise any motor vehicle
28 dealer or any officer, partner or stockholder of any motor
29 vehicle dealer from selling or transferring any part of the
30 interest of any of them to any other person or persons or
31 party or parties unless such sale or transfer is to a
32 transferee who would not otherwise qualify for a new motor
33 vehicle dealers license under "The Illinois Vehicle Code"
34 or unless the franchiser, having the burden of proof,
35 proves that such sale or transfer is to a person or party
36 who is not of good moral character or does not meet the

1 franchiser's existing and reasonable capital standards
2 and, with consideration given to the volume of sales and
3 service of the dealership, uniformly applied minimum
4 business experience standards in the market area. However,
5 nothing herein shall be construed to prevent a franchiser
6 from implementing affirmative action programs providing
7 business opportunities for minorities or from complying
8 with applicable federal, State or local law:

9 (A) If the manufacturer intends to refuse to
10 approve the sale or transfer of all or a part of the
11 interest, then it shall, within 60 days from receipt of
12 the completed application forms generally utilized by
13 a manufacturer to conduct its review and a copy of all
14 agreements regarding the proposed transfer, send a
15 letter by certified mail, return receipt requested,
16 advising the franchisee of any refusal to approve the
17 sale or transfer of all or part of the interest and
18 shall state that the dealer only has 30 days from the
19 receipt of the notice to file with the Motor Vehicle
20 Review Board a written protest against the proposed
21 action. The notice shall set forth specific criteria
22 used to evaluate the prospective transferee and the
23 grounds for refusing to approve the sale or transfer to
24 that transferee. Within 30 days from the franchisee's
25 receipt of the manufacturer's notice, the franchisee
26 may file with the Board a written protest against the
27 proposed action.

28 When a protest has been timely filed, the Board
29 shall enter an order, fixing the date (within 60 days
30 of the date of such order), time, and place of a
31 hearing on the protest, required under Sections 12 and
32 29 of this Act, and send by certified mail, return
33 receipt requested, a copy of the order to the
34 manufacturer that filed notice of intention of the
35 proposed action and to the protesting franchisee.

36 The manufacturer shall have the burden of proof to

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

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

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

32 (8) to grant an additional franchise in the relevant
33 market area of an existing franchise of the same line make
34 or to relocate an existing motor vehicle dealership within
35 or into a relevant market area of an existing franchise of
36 the same line make. However, if the manufacturer wishes to

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

30 When a protest has been timely filed, the Board shall
31 enter an order fixing a date (within 60 days of the date of
32 the order), time, and place of a hearing on the protest,
33 required under Sections 12 and 29 of this Act, and send by
34 certified or registered mail, return receipt requested, a
35 copy of the order to the manufacturer that filed the notice
36 of intention to grant or establish the proposed additional

1 or relocated franchise and to the protesting dealer or
2 dealers of the same line make whose relevant market area
3 includes the proposed location of the additional or
4 relocated franchise.

5 When more than one protest is filed against the grant
6 or establishment of the additional or relocated franchise
7 of the same line make, the Board may consolidate the
8 hearings to expedite disposition of the matter. The
9 manufacturer shall have the burden of proof to establish
10 that good cause exists to allow the grant or establishment
11 of the additional or relocated franchise. The manufacturer
12 may not grant or establish the additional franchise or
13 relocate the existing franchise before the hearing process
14 is concluded as prescribed by this Act, and thereafter if
15 the Board determines that the manufacturer has failed to
16 meet its burden of proof and that good cause does not exist
17 to allow the grant or establishment of the additional
18 franchise or relocation of the existing franchise.

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

33 A. (Blank).

34 B. For the purposes of this Section, appointment of
35 a successor motor vehicle dealer at the same location
36 as its predecessor, or within 2 miles of such location,

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

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

27 D. Nothing in this Section shall be construed to
28 prevent a franchiser from implementing affirmative
29 action programs providing business opportunities for
30 minorities or from complying with applicable federal,
31 State or local law;

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

36 (10) to prevent or refuse to give effect to the

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

16 (i) The designated successor gives the
17 franchiser written notice by certified mail,
18 return receipt requested, of his or her intention
19 to succeed to the ownership of the dealer within 60
20 days of the dealer's death or incapacity; and

21 (ii) The designated successor agrees to be
22 bound by all the terms and conditions of the
23 existing franchise.

24 Notwithstanding the foregoing, in the event the motor
25 vehicle dealer or franchisee and manufacturer have duly
26 executed an agreement concerning succession rights prior
27 to the dealer's death or incapacitation, the agreement
28 shall be observed.

29 (A) If the franchiser intends to refuse to honor
30 the successor to the ownership of a deceased or
31 incapacitated dealer or franchisee under an existing
32 franchise agreement, the franchiser shall send a
33 letter by certified mail, return receipt requested, to
34 the designated successor within 60 days from receipt of
35 a proposal advising of its intent to refuse to honor
36 the succession and to discontinue the existing

1 franchise agreement and shall state that the
2 designated successor only has 30 days from the receipt
3 of the notice to file with the Motor Vehicle Review
4 Board a written protest against the proposed action.
5 The notice shall set forth the specific grounds for the
6 refusal to honor the succession and discontinue the
7 existing franchise agreement.

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

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

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

26 The manufacturer shall have the burden of proof to
27 establish that good cause exists to refuse to honor the
28 succession and discontinue the existing franchise
29 agreement. The determination whether good cause exists
30 to refuse to honor the succession shall be made by the
31 Board under subdivision (B) of this paragraph (10). The
32 manufacturer shall not refuse to honor the succession
33 or discontinue the existing franchise agreement before
34 the hearing process is concluded as prescribed by this
35 Act, and thereafter if the Board determines that it has
36 failed to meet its burden of proof and that good cause

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

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

15 (11) to prevent or refuse to approve a proposal to
16 establish a successor franchise at a location previously
17 approved by the franchiser when submitted with the
18 voluntary termination by the existing franchisee unless
19 the successor franchisee would not otherwise qualify for a
20 new motor vehicle dealer's license under the Illinois
21 Vehicle Code or unless the franchiser, having the burden of
22 proof, proves that such proposed successor is not of good
23 moral character or does not meet the franchiser's existing
24 and reasonable capital standards and, with consideration
25 given to the volume of sales and service of the dealership,
26 uniformly applied minimum business experience standards in
27 the market area. However, when such a rejection of a
28 proposal is made, the manufacturer shall give written
29 notice of its reasons to the franchisee within 60 days of
30 receipt by the manufacturer of the proposal. However,
31 nothing herein shall be construed to prevent a franchiser
32 from implementing affirmative action programs providing
33 business opportunities for minorities, or from complying
34 with applicable federal, State or local law;

35 (12) to prevent or refuse to grant a franchise to a
36 person because such person owns, has investment in or

1 participates in the management of or holds a franchise for
2 the sale of another make or line of motor vehicles within 7
3 miles of the proposed franchise location in a county having
4 a population of more than 300,000 persons, or within 12
5 miles of the proposed franchise location in a county having
6 a population of less than 300,000 persons; or

7 (13) to prevent or attempt to prevent any new motor
8 vehicle dealer from establishing any additional motor
9 vehicle dealership or other facility limited to the sale of
10 factory repurchase vehicles or late model vehicles or
11 otherwise offering for sale factory repurchase vehicles of
12 the same line make at an existing franchise by failing to
13 make available any contract, agreement or other
14 arrangement which is made available or otherwise offered to
15 any person.

16 (f) It is deemed a violation for a manufacturer, a
17 distributor, a wholesale, a distributor branch or division, a
18 factory branch or division, or a wholesale branch or division,
19 or officer, agent, broker, shareholder, except a shareholder of
20 1% or less of the outstanding shares of any class of securities
21 of a manufacturer, distributor, or wholesaler which is a
22 publicly traded corporation, or other representative, directly
23 or indirectly, to own or operate a place of business as a motor
24 vehicle franchisee or motor vehicle financing affiliate,
25 except that, this subsection shall not prohibit the ownership
26 or operation of a place of business by a manufacturer,
27 distributor, or wholesaler for a period, not to exceed 18
28 months, during the transition from one motor vehicle franchisee
29 to another; or the investment in a motor vehicle franchisee by
30 a manufacturer, distributor, or wholesaler if the investment is
31 for the sole purpose of enabling a partner or shareholder in
32 that motor vehicle franchisee to acquire an interest in that
33 motor vehicle franchisee and that partner or shareholder is not
34 otherwise employed by or associated with the manufacturer,
35 distributor, or wholesaler and would not otherwise have the
36 requisite capital investment funds to invest in the motor

1 vehicle franchisee, and has the right to purchase the entire
2 equity interest of the manufacturer, distributor, or
3 wholesaler in the motor vehicle franchisee within a reasonable
4 period of time not to exceed 5 years.

5 (Source: P.A. 90-655, eff. 7-30-98; 91-415, eff. 1-1-00;
6 91-485, eff. 1-1-00; 91-701, eff. 5-12-00.)