

**SB0270**



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**SB0270**

Introduced 2/3/2005, by Sen. Kirk W. Dillard - John J. Cullerton

**SYNOPSIS AS INTRODUCED:**

815 ILCS 505/10a

from Ch. 121 1/2, par. 270a

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that any party to an action for actual damages shall have the right to demand a trial by jury. Effective immediately.

LRB094 05867 RXD 35921 b

**A BILL FOR**

1 AN ACT concerning business.

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

4 Section 5. The Consumer Fraud and Deceptive Business  
5 Practices Act is amended by changing Section 10a as follows:

6 (815 ILCS 505/10a) (from Ch. 121 1/2, par. 270a)

7 Sec. 10a. Action for actual damages.

8 (a) Any person who suffers actual damage as a result of a  
9 violation of this Act committed by any other person may bring  
10 an action against such person. The court or jury, in its  
11 discretion may award actual economic damages or any other  
12 relief which the court or jury deems proper; provided, however,  
13 that no award of punitive damages may be assessed under this  
14 Section against a party defendant who is a new vehicle dealer  
15 or used vehicle dealer within the meaning of Chapter 5 of the  
16 Illinois Vehicle Code or who is the holder of a retail  
17 installment contract within the meaning of Section 2.12 of the  
18 Motor Vehicle Retail Installment Sales Act, unless the conduct  
19 engaged in was willful or intentional and done with evil motive  
20 or reckless indifference to the rights of others. Proof of a  
21 public injury, a pattern, or an effect on consumers and the  
22 public interest generally shall be required in order to state a  
23 cause of action under this Section against a party defendant  
24 who is a new vehicle dealer or used vehicle dealer within the  
25 meaning of Chapter 5 of the Illinois Vehicle Code or who is the  
26 holder of a retail installment contract within the meaning of  
27 Section 2.12 of the Motor Vehicle Retail Installment Sales Act.  
28 Proof of such public injury may be shown by any one of the  
29 following factors:

30 (1) Violation of a statute that has a public interest  
31 impact.

32 (2) Repeated acts prior to the act involving the

1 plaintiff.

2 (3) Potential for repetition.

3 (a-5) Any party to an action brought under this Section  
4 shall have the right to demand a trial by jury.

5 (b) Such action may be commenced in the county in which the  
6 person against whom it is brought resides, has his principal  
7 place of business, or is doing business, or in the county where  
8 the transaction or any substantial portion thereof occurred.

9 (c) Except as provided in subsections (f), (g), and (h) of  
10 this Section, in any action brought by a person under this  
11 Section, the Court may grant injunctive relief where  
12 appropriate and may award, in addition to the relief provided  
13 in this Section, reasonable attorney's fees and costs to the  
14 prevailing party.

15 (d) Upon commencement of any action brought under this  
16 Section the plaintiff shall mail a copy of the complaint or  
17 other initial pleading to the Attorney General and, upon entry  
18 of any judgment or order in the action, shall mail a copy of  
19 such judgment or order to the Attorney General.

20 (e) Any action for damages under this Section shall be  
21 forever barred unless commenced within 3 years after the cause  
22 of action accrued; provided that, whenever any action is  
23 brought by the Attorney General or a State's Attorney for a  
24 violation of this Act, the running of the foregoing statute of  
25 limitations, with respect to every private right of action for  
26 damages which is based in whole or in part on any matter  
27 complained of in said action by the Attorney General or State's  
28 Attorney, shall be suspended during the pendency thereof, and  
29 for one year thereafter.

30 (f) At any time more than 30 days before the commencement  
31 of trial, a party, who is a new vehicle dealer or used vehicle  
32 dealer within the meaning of Chapter 5 of the Illinois Vehicle  
33 Code or who is the holder of a retail installment contract  
34 within the meaning of Section 2.12 of the Motor Vehicle Retail  
35 Installment Sales Act and who is defending a claim under this  
36 Act, may serve upon the party seeking relief under this Act an

1 offer to allow judgment to be taken against the defending party  
2 to the effect specified in the offer with costs then accrued.  
3 If within 10 days after service of the offer, the offeree  
4 serves written notice that the offer is accepted, either party  
5 may then file the offer and notice of acceptance together with  
6 proof of service of the notice; the court shall then enter  
7 judgment. An offer not accepted shall be deemed withdrawn and  
8 evidence of the offer is not admissible except in a proceeding  
9 to determine costs. When a party seeking relief under this Act  
10 does not accept an offer filed with the clerk and served upon  
11 the attorney for that party more than 30 days before the  
12 commencement of trial and when that party fails to obtain a  
13 judgment in an amount more than the total offer of settlement,  
14 that party shall forfeit and the court may not award any  
15 compensation for attorney's fees and costs incurred after the  
16 date of the offer.

17 (g) At any time more than 30 days before the commencement  
18 of trial, a party who is seeking relief under this Act from a  
19 new vehicle dealer or used vehicle dealer within the meaning of  
20 Chapter 5 of the Illinois Vehicle Code or from the holder of a  
21 retail installment contract within the meaning of Section 2.12  
22 of the Motor Vehicle Retail Installment Sales Act may serve the  
23 dealer or holder an offer to allow judgment to be taken against  
24 the dealer or holder to the effect specified in the offer with  
25 costs then accrued. If within 10 days after service of the  
26 offer, the offeree serves written notice that the offer is  
27 accepted, either party may then file the offer and notice of  
28 acceptance together with proof of service of the notice; the  
29 court shall then enter judgment. An offer not accepted shall be  
30 deemed withdrawn and evidence of the offer is not admissible  
31 except in a proceeding to determine costs. When a dealer or  
32 holder does not accept an offer filed with the clerk and served  
33 upon the attorney for the dealer or holder more than 30 days  
34 before the commencement of trial and if the party seeking  
35 relief against a dealer or holder obtains a judgment in an  
36 amount equal to or in excess of the offer amount, the party

1 seeking relief shall be paid interest on the offer amount at  
2 the rate as provided in Section 2-1303 of the Code of Civil  
3 Procedure from the date of the offer until the judgment is  
4 paid.

5 (h) At least 30 days prior to the filing of an action under  
6 this Section, a party who is seeking relief shall serve a  
7 written notice of the nature of the alleged violation and  
8 demand for relief upon the prospective party, who is a new  
9 vehicle dealer or used vehicle dealer within the meaning of  
10 Chapter 5 of the Illinois Vehicle Code or who is the holder of  
11 a retail installment contract within the meaning of Section  
12 2.12 of the Motor Vehicle Retail Installment Sales Act, against  
13 whom such action will be commenced. Any person receiving such a  
14 demand for relief may, within 30 days of service of the demand  
15 for relief, submit a written offer of settlement, which offer  
16 is to be exclusive of attorney's fees, to the party serving the  
17 notice and demand. The party who is seeking relief must certify  
18 in any cause of action that the notice and demand was served  
19 upon the named defendants and the substance of their response,  
20 if any. If the offer of settlement is rejected in writing by  
21 the party who is seeking relief, then, in any subsequent  
22 action, the court shall deny any award of attorney's fees and  
23 costs requested by the party seeking relief under this Act  
24 incurred after the rejection of the written offer of  
25 settlement, if the judgment is less than the amount contained  
26 within the offer of settlement. All written offers of  
27 settlement under this subsection shall be presumed to be  
28 offered without prejudice in compromise of a disputed matter.  
29 (Source: P.A. 91-270, eff. 1-1-00.)

30 Section 99. Effective date. This Act takes effect upon  
31 becoming law.