



Rep. Barbara Flynn Currie

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09800HB5684ham001

LRB098 16363 HLH 57362 a

1 AMENDMENT TO HOUSE BILL 5684

2 AMENDMENT NO. _____. Amend House Bill 5684 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. If and only if House Bill 2317 of the 98th
5 General Assembly becomes law, then the Use Tax Act is amended
6 by changing Section 2 as follows:

7 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

8 Sec. 2. "Use" means the exercise by any person of any right
9 or power over tangible personal property incident to the
10 ownership of that property, except that it does not include the
11 sale of such property in any form as tangible personal property
12 in the regular course of business to the extent that such
13 property is not first subjected to a use for which it was
14 purchased, and does not include the use of such property by its
15 owner for demonstration purposes: Provided that the property
16 purchased is deemed to be purchased for the purpose of resale,

1 despite first being used, to the extent to which it is resold
2 as an ingredient of an intentionally produced product or
3 by-product of manufacturing. "Use" does not mean the
4 demonstration use or interim use of tangible personal property
5 by a retailer before he sells that tangible personal property.
6 For watercraft or aircraft, if the period of demonstration use
7 or interim use by the retailer exceeds 18 months, the retailer
8 shall pay on the retailers' original cost price the tax imposed
9 by this Act, and no credit for that tax is permitted if the
10 watercraft or aircraft is subsequently sold by the retailer.
11 "Use" does not mean the physical incorporation of tangible
12 personal property, to the extent not first subjected to a use
13 for which it was purchased, as an ingredient or constituent,
14 into other tangible personal property (a) which is sold in the
15 regular course of business or (b) which the person
16 incorporating such ingredient or constituent therein has
17 undertaken at the time of such purchase to cause to be
18 transported in interstate commerce to destinations outside the
19 State of Illinois: Provided that the property purchased is
20 deemed to be purchased for the purpose of resale, despite first
21 being used, to the extent to which it is resold as an
22 ingredient of an intentionally produced product or by-product
23 of manufacturing.

24 "Watercraft" means a Class 2, Class 3, or Class 4
25 watercraft as defined in Section 3-2 of the Boat Registration
26 and Safety Act, a personal watercraft, or any boat equipped

1 with an inboard motor.

2 "Purchase at retail" means the acquisition of the ownership
3 of or title to tangible personal property through a sale at
4 retail.

5 "Purchaser" means anyone who, through a sale at retail,
6 acquires the ownership of tangible personal property for a
7 valuable consideration.

8 "Sale at retail" means any transfer of the ownership of or
9 title to tangible personal property to a purchaser, for the
10 purpose of use, and not for the purpose of resale in any form
11 as tangible personal property to the extent not first subjected
12 to a use for which it was purchased, for a valuable
13 consideration: Provided that the property purchased is deemed
14 to be purchased for the purpose of resale, despite first being
15 used, to the extent to which it is resold as an ingredient of
16 an intentionally produced product or by-product of
17 manufacturing. For this purpose, slag produced as an incident
18 to manufacturing pig iron or steel and sold is considered to be
19 an intentionally produced by-product of manufacturing. "Sale
20 at retail" includes any such transfer made for resale unless
21 made in compliance with Section 2c of the Retailers' Occupation
22 Tax Act, as incorporated by reference into Section 12 of this
23 Act. Transactions whereby the possession of the property is
24 transferred but the seller retains the title as security for
25 payment of the selling price are sales.

26 "Sale at retail" shall also be construed to include any

1 Illinois florist's sales transaction in which the purchase
2 order is received in Illinois by a florist and the sale is for
3 use or consumption, but the Illinois florist has a florist in
4 another state deliver the property to the purchaser or the
5 purchaser's donee in such other state.

6 Nonreusable tangible personal property that is used by
7 persons engaged in the business of operating a restaurant,
8 cafeteria, or drive-in is a sale for resale when it is
9 transferred to customers in the ordinary course of business as
10 part of the sale of food or beverages and is used to deliver,
11 package, or consume food or beverages, regardless of where
12 consumption of the food or beverages occurs. Examples of those
13 items include, but are not limited to nonreusable, paper and
14 plastic cups, plates, baskets, boxes, sleeves, buckets or other
15 containers, utensils, straws, placemats, napkins, doggie bags,
16 and wrapping or packaging materials that are transferred to
17 customers as part of the sale of food or beverages in the
18 ordinary course of business.

19 The purchase, employment and transfer of such tangible
20 personal property as newsprint and ink for the primary purpose
21 of conveying news (with or without other information) is not a
22 purchase, use or sale of tangible personal property.

23 "Selling price" means the consideration for a sale valued
24 in money whether received in money or otherwise, including
25 cash, credits, property other than as hereinafter provided, and
26 services, but not including the value of or credit given for

1 traded-in tangible personal property where the item that is
2 traded-in is of like kind and character as that which is being
3 sold, and shall be determined without any deduction on account
4 of the cost of the property sold, the cost of materials used,
5 labor or service cost or any other expense whatsoever, but does
6 not include interest or finance charges which appear as
7 separate items on the bill of sale or sales contract nor
8 charges that are added to prices by sellers on account of the
9 seller's tax liability under the "Retailers' Occupation Tax
10 Act", or on account of the seller's duty to collect, from the
11 purchaser, the tax that is imposed by this Act, or, except as
12 otherwise provided with respect to any cigarette tax imposed by
13 a home rule unit, on account of the seller's tax liability
14 under any local occupation tax administered by the Department,
15 or, except as otherwise provided with respect to any cigarette
16 tax imposed by a home rule unit on account of the seller's duty
17 to collect, from the purchasers, the tax that is imposed under
18 any local use tax administered by the Department. Effective
19 December 1, 1985, "selling price" shall include charges that
20 are added to prices by sellers on account of the seller's tax
21 liability under the Cigarette Tax Act, on account of the
22 seller's duty to collect, from the purchaser, the tax imposed
23 under the Cigarette Use Tax Act, and on account of the seller's
24 duty to collect, from the purchaser, any cigarette tax imposed
25 by a home rule unit.

26 Notwithstanding any law to the contrary, for any motor

1 vehicle, as defined in Section 1-146 of the Vehicle Code, that
2 is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
3 purpose of leasing the vehicle for a defined period that is
4 longer than one year and (1) is a motor vehicle of the second
5 division that: (A) is a self-contained motor vehicle designed
6 or permanently converted to provide living quarters for
7 recreational, camping, or travel use, with direct walk through
8 access to the living quarters from the driver's seat; (B) is of
9 the van configuration designed for the transportation of not
10 less than 7 nor more than 16 passengers; or (C) has a gross
11 vehicle weight rating of 8,000 pounds or less or (2) is a motor
12 vehicle of the first division, "selling price" or "amount of
13 sale" means the consideration received by the lessor pursuant
14 to the lease contract, including amounts due at lease signing
15 and all monthly or other regular payments charged over the term
16 of the lease. Also included in the selling price is any amount
17 received by the lessor from the lessee for the leased vehicle
18 that is not calculated at the time the lease is executed,
19 including, but not limited to, excess mileage charges and
20 charges for excess wear and tear. For sales that occur in
21 Illinois, with respect to any amount received by the lessor
22 from the lessee for the leased vehicle that is not calculated
23 at the time the lease is executed, the lessor who purchased the
24 motor vehicle does not incur the tax imposed by the Use Tax Act
25 on those amounts, and the retailer who makes the retail sale of
26 the motor vehicle to the lessor is not required to collect the

1 tax imposed by this Act or to pay the tax imposed by the
2 Retailers' Occupation Tax Act on those amounts. However, the
3 lessor who purchased the motor vehicle assumes the liability
4 for reporting and paying the tax on those amounts directly to
5 the Department in the same form (Illinois Retailers' Occupation
6 Tax, and local retailers' occupation taxes, if applicable) in
7 which the retailer would have reported and paid such tax if the
8 retailer had accounted for the tax to the Department. For
9 amounts received by the lessor from the lessee that are not
10 calculated at the time the lease is executed, the lessor must
11 file the return and pay the tax to the Department by the due
12 date otherwise required by this Act for returns other than
13 transaction returns. If the retailer is entitled under this Act
14 to a discount for collecting and remitting the tax imposed
15 under this Act to the Department with respect to the sale of
16 the motor vehicle to the lessor, then the right to the discount
17 provided in this Act shall be transferred to the lessor with
18 respect to the tax paid by the lessor for any amount received
19 by the lessor from the lessee for the leased vehicle that is
20 not calculated at the time the lease is executed; provided that
21 the discount is only allowed if the return is timely filed and
22 for amounts timely paid. The "selling price" of a motor vehicle
23 that is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
24 purpose of leasing for a defined period of longer than one year
25 shall not be reduced by the value of or credit given for
26 traded-in tangible personal property owned by the lessor, nor

1 shall it be reduced by the value of or credit given for
2 traded-in tangible personal property owned by the lessee,
3 regardless of whether the trade-in value thereof is assigned by
4 the lessee to the lessor. In the case of a motor vehicle that
5 is sold for the purpose of leasing for a defined period of
6 longer than one year, the sale occurs at the time of the
7 delivery of the vehicle, regardless of the due date of any
8 lease payments. A lessor who incurs a Retailers' Occupation Tax
9 liability on the sale of a motor vehicle coming off lease may
10 not take a credit against that liability for the Use Tax the
11 lessor paid upon the purchase of the motor vehicle (or for any
12 tax the lessor paid with respect to any amount received by the
13 lessor from the lessee for the leased vehicle that was not
14 calculated at the time the lease was executed) if the selling
15 price of the motor vehicle at the time of purchase was
16 calculated using the definition of "selling price" as defined
17 in this paragraph. Notwithstanding any other provision of this
18 Act to the contrary, lessors shall file all returns and make
19 all payments required under this paragraph to the Department by
20 electronic means in the manner and form as required by the
21 Department. This paragraph does not apply to leases of motor
22 vehicles for which, at the time the lease is entered into, the
23 term of the lease is not a defined period, including leases
24 with a defined initial period with the option to continue the
25 lease on a month-to-month or other basis beyond the initial
26 defined period.

1 The phrase "like kind and character" shall be liberally
2 construed (including but not limited to any form of motor
3 vehicle for any form of motor vehicle, or any kind of farm or
4 agricultural implement for any other kind of farm or
5 agricultural implement), while not including a kind of item
6 which, if sold at retail by that retailer, would be exempt from
7 retailers' occupation tax and use tax as an isolated or
8 occasional sale.

9 "Department" means the Department of Revenue.

10 "Person" means any natural individual, firm, partnership,
11 association, joint stock company, joint adventure, public or
12 private corporation, limited liability company, or a receiver,
13 executor, trustee, guardian or other representative appointed
14 by order of any court.

15 "Retailer" means and includes every person engaged in the
16 business of making sales at retail as defined in this Section.

17 A person who holds himself or herself out as being engaged
18 (or who habitually engages) in selling tangible personal
19 property at retail is a retailer hereunder with respect to such
20 sales (and not primarily in a service occupation)
21 notwithstanding the fact that such person designs and produces
22 such tangible personal property on special order for the
23 purchaser and in such a way as to render the property of value
24 only to such purchaser, if such tangible personal property so
25 produced on special order serves substantially the same
26 function as stock or standard items of tangible personal

1 property that are sold at retail.

2 A person whose activities are organized and conducted
3 primarily as a not-for-profit service enterprise, and who
4 engages in selling tangible personal property at retail
5 (whether to the public or merely to members and their guests)
6 is a retailer with respect to such transactions, excepting only
7 a person organized and operated exclusively for charitable,
8 religious or educational purposes either (1), to the extent of
9 sales by such person to its members, students, patients or
10 inmates of tangible personal property to be used primarily for
11 the purposes of such person, or (2), to the extent of sales by
12 such person of tangible personal property which is not sold or
13 offered for sale by persons organized for profit. The selling
14 of school books and school supplies by schools at retail to
15 students is not "primarily for the purposes of" the school
16 which does such selling. This paragraph does not apply to nor
17 subject to taxation occasional dinners, social or similar
18 activities of a person organized and operated exclusively for
19 charitable, religious or educational purposes, whether or not
20 such activities are open to the public.

21 A person who is the recipient of a grant or contract under
22 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
23 serves meals to participants in the federal Nutrition Program
24 for the Elderly in return for contributions established in
25 amount by the individual participant pursuant to a schedule of
26 suggested fees as provided for in the federal Act is not a

1 retailer under this Act with respect to such transactions.

2 Persons who engage in the business of transferring tangible
3 personal property upon the redemption of trading stamps are
4 retailers hereunder when engaged in such business.

5 The isolated or occasional sale of tangible personal
6 property at retail by a person who does not hold himself out as
7 being engaged (or who does not habitually engage) in selling
8 such tangible personal property at retail or a sale through a
9 bulk vending machine does not make such person a retailer
10 hereunder. However, any person who is engaged in a business
11 which is not subject to the tax imposed by the "Retailers'
12 Occupation Tax Act" because of involving the sale of or a
13 contract to sell real estate or a construction contract to
14 improve real estate, but who, in the course of conducting such
15 business, transfers tangible personal property to users or
16 consumers in the finished form in which it was purchased, and
17 which does not become real estate, under any provision of a
18 construction contract or real estate sale or real estate sales
19 agreement entered into with some other person arising out of or
20 because of such nontaxable business, is a retailer to the
21 extent of the value of the tangible personal property so
22 transferred. If, in such transaction, a separate charge is made
23 for the tangible personal property so transferred, the value of
24 such property, for the purposes of this Act, is the amount so
25 separately charged, but not less than the cost of such property
26 to the transferor; if no separate charge is made, the value of

1 such property, for the purposes of this Act, is the cost to the
2 transferor of such tangible personal property.

3 "Retailer maintaining a place of business in this State",
4 or any like term, means and includes any of the following
5 retailers:

6 1. A retailer having or maintaining within this State,
7 directly or by a subsidiary, an office, distribution house,
8 sales house, warehouse or other place of business, or any
9 agent or other representative operating within this State
10 under the authority of the retailer or its subsidiary,
11 irrespective of whether such place of business or agent or
12 other representative is located here permanently or
13 temporarily, or whether such retailer or subsidiary is
14 licensed to do business in this State. However, the
15 ownership of property that is located at the premises of a
16 printer with which the retailer has contracted for printing
17 and that consists of the final printed product, property
18 that becomes a part of the final printed product, or copy
19 from which the printed product is produced shall not result
20 in the retailer being deemed to have or maintain an office,
21 distribution house, sales house, warehouse, or other place
22 of business within this State.

23 1.1. Beginning July 1, 2011, a retailer having a
24 contract with a person located in this State under which
25 the person, for a commission or other consideration based
26 upon the sale of tangible personal property by the

1 retailer, directly or indirectly refers potential
2 customers to the retailer by a link on the person's
3 Internet website. The provisions of this paragraph 1.1
4 shall apply only if the cumulative gross receipts from
5 sales of tangible personal property by the retailer to
6 customers who are referred to the retailer by all persons
7 in this State under such contracts exceed \$10,000 during
8 the preceding 4 quarterly periods ending on the last day of
9 March, June, September, and December.

10 1.2. Beginning July 1, 2011, a retailer having a
11 contract with a person located in this State under which:

12 A. the retailer sells the same or substantially
13 similar line of products as the person located in this
14 State and does so using an identical or substantially
15 similar name, trade name, or trademark as the person
16 located in this State; and

17 B. the retailer provides a commission or other
18 consideration to the person located in this State based
19 upon the sale of tangible personal property by the
20 retailer.

21 The provisions of this paragraph 1.2 shall apply only if
22 the cumulative gross receipts from sales of tangible
23 personal property by the retailer to customers in this
24 State under all such contracts exceed \$10,000 during the
25 preceding 4 quarterly periods ending on the last day of
26 March, June, September, and December.

1 2. A retailer soliciting orders for tangible personal
2 property by means of a telecommunication or television
3 shopping system (which utilizes toll free numbers) which is
4 intended by the retailer to be broadcast by cable
5 television or other means of broadcasting, to consumers
6 located in this State.

7 3. A retailer, pursuant to a contract with a
8 broadcaster or publisher located in this State, soliciting
9 orders for tangible personal property by means of
10 advertising which is disseminated primarily to consumers
11 located in this State and only secondarily to bordering
12 jurisdictions.

13 4. A retailer soliciting orders for tangible personal
14 property by mail if the solicitations are substantial and
15 recurring and if the retailer benefits from any banking,
16 financing, debt collection, telecommunication, or
17 marketing activities occurring in this State or benefits
18 from the location in this State of authorized installation,
19 servicing, or repair facilities.

20 5. A retailer that is owned or controlled by the same
21 interests that own or control any retailer engaging in
22 business in the same or similar line of business in this
23 State.

24 6. A retailer having a franchisee or licensee operating
25 under its trade name if the franchisee or licensee is
26 required to collect the tax under this Section.

1 7. A retailer, pursuant to a contract with a cable
2 television operator located in this State, soliciting
3 orders for tangible personal property by means of
4 advertising which is transmitted or distributed over a
5 cable television system in this State.

6 8. A retailer engaging in activities in Illinois, which
7 activities in the state in which the retail business
8 engaging in such activities is located would constitute
9 maintaining a place of business in that state.

10 "Bulk vending machine" means a vending machine, containing
11 unsorted confections, nuts, toys, or other items designed
12 primarily to be used or played with by children which, when a
13 coin or coins of a denomination not larger than \$0.50 are
14 inserted, are dispensed in equal portions, at random and
15 without selection by the customer.

16 (Source: P.A. 95-723, eff. 6-23-08; 96-1544, eff. 3-10-11;
17 09800HB2317enr.)

18 Section 10. If and only if House Bill 2317 of the 98th
19 General Assembly becomes law, then the Retailers' Occupation
20 Tax Act is amended by changing Section 1 as follows:

21 (35 ILCS 120/1) (from Ch. 120, par. 440)

22 Sec. 1. Definitions. "Sale at retail" means any transfer of
23 the ownership of or title to tangible personal property to a
24 purchaser, for the purpose of use or consumption, and not for

1 the purpose of resale in any form as tangible personal property
2 to the extent not first subjected to a use for which it was
3 purchased, for a valuable consideration: Provided that the
4 property purchased is deemed to be purchased for the purpose of
5 resale, despite first being used, to the extent to which it is
6 resold as an ingredient of an intentionally produced product or
7 byproduct of manufacturing. For this purpose, slag produced as
8 an incident to manufacturing pig iron or steel and sold is
9 considered to be an intentionally produced byproduct of
10 manufacturing. Transactions whereby the possession of the
11 property is transferred but the seller retains the title as
12 security for payment of the selling price shall be deemed to be
13 sales.

14 "Sale at retail" shall be construed to include any transfer
15 of the ownership of or title to tangible personal property to a
16 purchaser, for use or consumption by any other person to whom
17 such purchaser may transfer the tangible personal property
18 without a valuable consideration, and to include any transfer,
19 whether made for or without a valuable consideration, for
20 resale in any form as tangible personal property unless made in
21 compliance with Section 2c of this Act.

22 Sales of tangible personal property, which property, to the
23 extent not first subjected to a use for which it was purchased,
24 as an ingredient or constituent, goes into and forms a part of
25 tangible personal property subsequently the subject of a "Sale
26 at retail", are not sales at retail as defined in this Act:

1 Provided that the property purchased is deemed to be purchased
2 for the purpose of resale, despite first being used, to the
3 extent to which it is resold as an ingredient of an
4 intentionally produced product or byproduct of manufacturing.

5 "Sale at retail" shall be construed to include any Illinois
6 florist's sales transaction in which the purchase order is
7 received in Illinois by a florist and the sale is for use or
8 consumption, but the Illinois florist has a florist in another
9 state deliver the property to the purchaser or the purchaser's
10 donee in such other state.

11 Nonreusable tangible personal property that is used by
12 persons engaged in the business of operating a restaurant,
13 cafeteria, or drive-in is a sale for resale when it is
14 transferred to customers in the ordinary course of business as
15 part of the sale of food or beverages and is used to deliver,
16 package, or consume food or beverages, regardless of where
17 consumption of the food or beverages occurs. Examples of those
18 items include, but are not limited to nonreusable, paper and
19 plastic cups, plates, baskets, boxes, sleeves, buckets or other
20 containers, utensils, straws, placemats, napkins, doggie bags,
21 and wrapping or packaging materials that are transferred to
22 customers as part of the sale of food or beverages in the
23 ordinary course of business.

24 The purchase, employment and transfer of such tangible
25 personal property as newsprint and ink for the primary purpose
26 of conveying news (with or without other information) is not a

1 purchase, use or sale of tangible personal property.

2 A person whose activities are organized and conducted
3 primarily as a not-for-profit service enterprise, and who
4 engages in selling tangible personal property at retail
5 (whether to the public or merely to members and their guests)
6 is engaged in the business of selling tangible personal
7 property at retail with respect to such transactions, excepting
8 only a person organized and operated exclusively for
9 charitable, religious or educational purposes either (1), to
10 the extent of sales by such person to its members, students,
11 patients or inmates of tangible personal property to be used
12 primarily for the purposes of such person, or (2), to the
13 extent of sales by such person of tangible personal property
14 which is not sold or offered for sale by persons organized for
15 profit. The selling of school books and school supplies by
16 schools at retail to students is not "primarily for the
17 purposes of" the school which does such selling. The provisions
18 of this paragraph shall not apply to nor subject to taxation
19 occasional dinners, socials or similar activities of a person
20 organized and operated exclusively for charitable, religious
21 or educational purposes, whether or not such activities are
22 open to the public.

23 A person who is the recipient of a grant or contract under
24 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
25 serves meals to participants in the federal Nutrition Program
26 for the Elderly in return for contributions established in

1 amount by the individual participant pursuant to a schedule of
2 suggested fees as provided for in the federal Act is not
3 engaged in the business of selling tangible personal property
4 at retail with respect to such transactions.

5 "Purchaser" means anyone who, through a sale at retail,
6 acquires the ownership of or title to tangible personal
7 property for a valuable consideration.

8 "Reseller of motor fuel" means any person engaged in the
9 business of selling or delivering or transferring title of
10 motor fuel to another person other than for use or consumption.
11 No person shall act as a reseller of motor fuel within this
12 State without first being registered as a reseller pursuant to
13 Section 2c or a retailer pursuant to Section 2a.

14 "Selling price" or the "amount of sale" means the
15 consideration for a sale valued in money whether received in
16 money or otherwise, including cash, credits, property, other
17 than as hereinafter provided, and services, but not including
18 the value of or credit given for traded-in tangible personal
19 property where the item that is traded-in is of like kind and
20 character as that which is being sold, and shall be determined
21 without any deduction on account of the cost of the property
22 sold, the cost of materials used, labor or service cost or any
23 other expense whatsoever, but does not include charges that are
24 added to prices by sellers on account of the seller's tax
25 liability under this Act, or on account of the seller's duty to
26 collect, from the purchaser, the tax that is imposed by the Use

1 Tax Act, or, except as otherwise provided with respect to any
2 cigarette tax imposed by a home rule unit, on account of the
3 seller's tax liability under any local occupation tax
4 administered by the Department, or, except as otherwise
5 provided with respect to any cigarette tax imposed by a home
6 rule unit on account of the seller's duty to collect, from the
7 purchasers, the tax that is imposed under any local use tax
8 administered by the Department. Effective December 1, 1985,
9 "selling price" shall include charges that are added to prices
10 by sellers on account of the seller's tax liability under the
11 Cigarette Tax Act, on account of the sellers' duty to collect,
12 from the purchaser, the tax imposed under the Cigarette Use Tax
13 Act, and on account of the seller's duty to collect, from the
14 purchaser, any cigarette tax imposed by a home rule unit.

15 Notwithstanding any law to the contrary, for any motor
16 vehicle, as defined in Section 1-146 of the Vehicle Code, that
17 is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
18 purpose of leasing the vehicle for a defined period that is
19 longer than one year and (1) is a motor vehicle of the second
20 division that: (A) is a self-contained motor vehicle designed
21 or permanently converted to provide living quarters for
22 recreational, camping, or travel use, with direct walk through
23 access to the living quarters from the driver's seat; (B) is of
24 the van configuration designed for the transportation of not
25 less than 7 nor more than 16 passengers; or (C) has a gross
26 vehicle weight rating of 8,000 pounds or less or (2) is a motor

1 vehicle of the first division, "selling price" or "amount of
2 sale" means the consideration received by the lessor pursuant
3 to the lease contract, including amounts due at lease signing
4 and all monthly or other regular payments charged over the term
5 of the lease. Also included in the selling price is any amount
6 received by the lessor from the lessee for the leased vehicle
7 that is not calculated at the time the lease is executed,
8 including, but not limited to, excess mileage charges and
9 charges for excess wear and tear. For sales that occur in
10 Illinois, with respect to any amount received by the lessor
11 from the lessee for the leased vehicle that is not calculated
12 at the time the lease is executed, the lessor who purchased the
13 motor vehicle does not incur the tax imposed by the Use Tax Act
14 on those amounts, and the retailer who makes the retail sale of
15 the motor vehicle to the lessor is not required to collect the
16 tax imposed by the Use Tax Act or to pay the tax imposed by this
17 Act on those amounts. However, the lessor who purchased the
18 motor vehicle assumes the liability for reporting and paying
19 the tax on those amounts directly to the Department in the same
20 form (Illinois Retailers' Occupation Tax, and local retailers'
21 occupation taxes, if applicable) in which the retailer would
22 have reported and paid such tax if the retailer had accounted
23 for the tax to the Department. For amounts received by the
24 lessor from the lessee that are not calculated at the time the
25 lease is executed, the lessor must file the return and pay the
26 tax to the Department by the due date otherwise required by

1 this Act for returns other than transaction returns. If the
2 retailer is entitled under this Act to a discount for
3 collecting and remitting the tax imposed under this Act to the
4 Department with respect to the sale of the motor vehicle to the
5 lessor, then the right to the discount provided in this Act
6 shall be transferred to the lessor with respect to the tax paid
7 by the lessor for any amount received by the lessor from the
8 lessee for the leased vehicle that is not calculated at the
9 time the lease is executed; provided that the discount is only
10 allowed if the return is timely filed and for amounts timely
11 paid. The "selling price" of a motor vehicle that is sold on or
12 after January 1, 2015 ~~July 1, 2014~~ for the purpose of leasing
13 for a defined period of longer than one year shall not be
14 reduced by the value of or credit given for traded-in tangible
15 personal property owned by the lessor, nor shall it be reduced
16 by the value of or credit given for traded-in tangible personal
17 property owned by the lessee, regardless of whether the
18 trade-in value thereof is assigned by the lessee to the lessor.
19 In the case of a motor vehicle that is sold for the purpose of
20 leasing for a defined period of longer than one year, the sale
21 occurs at the time of the delivery of the vehicle, regardless
22 of the due date of any lease payments. A lessor who incurs a
23 Retailers' Occupation Tax liability on the sale of a motor
24 vehicle coming off lease may not take a credit against that
25 liability for the Use Tax the lessor paid upon the purchase of
26 the motor vehicle (or for any tax the lessor paid with respect

1 to any amount received by the lessor from the lessee for the
2 leased vehicle that was not calculated at the time the lease
3 was executed) if the selling price of the motor vehicle at the
4 time of purchase was calculated using the definition of
5 "selling price" as defined in this paragraph. Notwithstanding
6 any other provision of this Act to the contrary, lessors shall
7 file all returns and make all payments required under this
8 paragraph to the Department by electronic means in the manner
9 and form as required by the Department. This paragraph does not
10 apply to leases of motor vehicles for which, at the time the
11 lease is entered into, the term of the lease is not a defined
12 period, including leases with a defined initial period with the
13 option to continue the lease on a month-to-month or other basis
14 beyond the initial defined period.

15 The phrase "like kind and character" shall be liberally
16 construed (including but not limited to any form of motor
17 vehicle for any form of motor vehicle, or any kind of farm or
18 agricultural implement for any other kind of farm or
19 agricultural implement), while not including a kind of item
20 which, if sold at retail by that retailer, would be exempt from
21 retailers' occupation tax and use tax as an isolated or
22 occasional sale.

23 "Gross receipts" from the sales of tangible personal
24 property at retail means the total selling price or the amount
25 of such sales, as hereinbefore defined. In the case of charge
26 and time sales, the amount thereof shall be included only as

1 and when payments are received by the seller. Receipts or other
2 consideration derived by a seller from the sale, transfer or
3 assignment of accounts receivable to a wholly owned subsidiary
4 will not be deemed payments prior to the time the purchaser
5 makes payment on such accounts.

6 "Department" means the Department of Revenue.

7 "Person" means any natural individual, firm, partnership,
8 association, joint stock company, joint adventure, public or
9 private corporation, limited liability company, or a receiver,
10 executor, trustee, guardian or other representative appointed
11 by order of any court.

12 The isolated or occasional sale of tangible personal
13 property at retail by a person who does not hold himself out as
14 being engaged (or who does not habitually engage) in selling
15 such tangible personal property at retail, or a sale through a
16 bulk vending machine, does not constitute engaging in a
17 business of selling such tangible personal property at retail
18 within the meaning of this Act; provided that any person who is
19 engaged in a business which is not subject to the tax imposed
20 by this Act because of involving the sale of or a contract to
21 sell real estate or a construction contract to improve real
22 estate or a construction contract to engineer, install, and
23 maintain an integrated system of products, but who, in the
24 course of conducting such business, transfers tangible
25 personal property to users or consumers in the finished form in
26 which it was purchased, and which does not become real estate

1 or was not engineered and installed, under any provision of a
2 construction contract or real estate sale or real estate sales
3 agreement entered into with some other person arising out of or
4 because of such nontaxable business, is engaged in the business
5 of selling tangible personal property at retail to the extent
6 of the value of the tangible personal property so transferred.
7 If, in such a transaction, a separate charge is made for the
8 tangible personal property so transferred, the value of such
9 property, for the purpose of this Act, shall be the amount so
10 separately charged, but not less than the cost of such property
11 to the transferor; if no separate charge is made, the value of
12 such property, for the purposes of this Act, is the cost to the
13 transferor of such tangible personal property. Construction
14 contracts for the improvement of real estate consisting of
15 engineering, installation, and maintenance of voice, data,
16 video, security, and all telecommunication systems do not
17 constitute engaging in a business of selling tangible personal
18 property at retail within the meaning of this Act if they are
19 sold at one specified contract price.

20 A person who holds himself or herself out as being engaged
21 (or who habitually engages) in selling tangible personal
22 property at retail is a person engaged in the business of
23 selling tangible personal property at retail hereunder with
24 respect to such sales (and not primarily in a service
25 occupation) notwithstanding the fact that such person designs
26 and produces such tangible personal property on special order

1 for the purchaser and in such a way as to render the property
2 of value only to such purchaser, if such tangible personal
3 property so produced on special order serves substantially the
4 same function as stock or standard items of tangible personal
5 property that are sold at retail.

6 Persons who engage in the business of transferring tangible
7 personal property upon the redemption of trading stamps are
8 engaged in the business of selling such property at retail and
9 shall be liable for and shall pay the tax imposed by this Act
10 on the basis of the retail value of the property transferred
11 upon redemption of such stamps.

12 "Bulk vending machine" means a vending machine, containing
13 unsorted confections, nuts, toys, or other items designed
14 primarily to be used or played with by children which, when a
15 coin or coins of a denomination not larger than \$0.50 are
16 inserted, are dispensed in equal portions, at random and
17 without selection by the customer.

18 (Source: P.A. 95-723, eff. 6-23-08; 09800HB2317enr.)

19 Section 15. The Illinois Vehicle Code is amended by
20 changing Section 5-501 as follows:

21 (625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

22 Sec. 5-501. Denial, suspension or revocation or
23 cancellation of a license.

24 (a) The license of a person issued under this Chapter may

1 be denied, revoked or suspended if the Secretary of State finds
2 that the applicant, or the officer, director, shareholder
3 having a ten percent or greater ownership interest in the
4 corporation, owner, partner, trustee, manager, employee or the
5 licensee has:

6 1. Violated this Act;

7 2. Made any material misrepresentation to the
8 Secretary of State in connection with an application for a
9 license, junking certificate, salvage certificate, title
10 or registration;

11 3. Committed a fraudulent act in connection with
12 selling, bartering, exchanging, offering for sale or
13 otherwise dealing in vehicles, chassis, essential parts,
14 or vehicle shells;

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

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

20 6. Failed to file or produce for the Secretary of State
21 any application, report, document or other pertinent
22 books, records, documents, letters, contracts, required to
23 be filed or produced under this Code or any rule or
24 regulation made by the Secretary of State pursuant to this
25 Code;

26 7. Previously had, within 3 years, such a license

1 denied, suspended, revoked, or cancelled under the
2 provisions of subsection (c) (2) of this Section;

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

6 a. the "Consumer Finance Act";

7 b. the "Consumer Installment Loan Act";

8 c. the "Retail Installment Sales Act";

9 d. the "Motor Vehicle Retail Installment Sales
10 Act";

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

15 f. "An Act to promote the welfare of wage-earners
16 by regulating the assignment of wages, and prescribing
17 a penalty for the violation thereof", approved July 1,
18 1935, as amended;

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

21 h. the "Consumer Fraud Act";

22 9. Failed to pay any fees or taxes due under this Act,
23 or has failed to transmit any fees or taxes received by him
24 for transmittal by him to the Secretary of State or the
25 State of Illinois;

26 10. Converted an abandoned vehicle;

1 11. Used a vehicle identification plate or number
2 assigned to a vehicle other than the one to which
3 originally assigned;

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

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

8 14. Violated the provisions of Chapter 3 of this Act,
9 as amended;

10 15. Violated Section 21-2 of the Criminal Code of 1961
11 or the Criminal Code of 2012, Criminal Trespass to
12 Vehicles;

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

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

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

21 19. Failed to pay the Dealer Recovery Trust Fund fee
22 under Section 5-102.7 of this Code;

23 20. Failed to pay, within 90 days after notice has been
24 given, any fine or fee owed as a result of an
25 administrative citation issued by the Secretary under this
26 Code.

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

7 1. Failure to make a tax return;

8 2. The filing of a fraudulent return;

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

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

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

24 (c) Cancellation of a license.

25 1. The license of a person issued under this Chapter
26 may be cancelled by the Secretary of State prior to its

1 expiration in any of the following situations:

2 A. When a license is voluntarily surrendered, by
3 the licensed person; or

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

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

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

1 (Source: P.A. 97-480, eff. 10-1-11; 97-838, eff. 7-20-12;
2 97-1150, eff. 1-25-13.)

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

5 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

6 Sec. 4. Unfair competition and practices.

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

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

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

24 (1) to accept, buy or order any motor vehicle or

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

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

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

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

21 (1) to adopt, change, establish or implement a plan or
22 system for the allocation and distribution of new motor
23 vehicles to motor vehicle dealers which is arbitrary or
24 capricious or to modify an existing plan so as to cause the
25 same to be arbitrary or capricious;

26 (2) to fail or refuse to advise or disclose to any

1 motor vehicle dealer having a franchise or selling
2 agreement, upon written request therefor, the basis upon
3 which new motor vehicles of the same line make are
4 allocated or distributed to motor vehicle dealers in the
5 State and the basis upon which the current allocation or
6 distribution is being made or will be made to such motor
7 vehicle dealer;

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

1 (4) to coerce, or attempt to coerce, any motor vehicle
2 dealer to enter into any agreement with such manufacturer,
3 distributor, wholesaler, distributor branch or division,
4 factory branch or division, or wholesale branch or
5 division, or officer, agent or other representative
6 thereof, or to do any other act prejudicial to the dealer
7 by threatening to reduce his allocation of motor vehicles
8 or cancel any franchise or any selling agreement existing
9 between such manufacturer, distributor, wholesaler,
10 distributor branch or division, or factory branch or
11 division, or wholesale branch or division, and the dealer.
12 However, notice in good faith to any motor vehicle dealer
13 of the dealer's violation of any terms or provisions of
14 such franchise or selling agreement or of any law or
15 regulation applicable to the conduct of a motor vehicle
16 dealer shall not constitute a violation of this Act;

17 (5) to require a franchisee to participate in an
18 advertising campaign or contest or any promotional
19 campaign, or to purchase or lease any promotional
20 materials, training materials, show room or other display
21 decorations or materials at the expense of the franchisee;

22 (6) to cancel or terminate the franchise or selling
23 agreement of a motor vehicle dealer without good cause and
24 without giving notice as hereinafter provided; to fail or
25 refuse to extend the franchise or selling agreement of a
26 motor vehicle dealer upon its expiration without good cause

1 and without giving notice as hereinafter provided; or, to
2 offer a renewal, replacement or succeeding franchise or
3 selling agreement containing terms and provisions the
4 effect of which is to substantially change or modify the
5 sales and service obligations or capital requirements of
6 the motor vehicle dealer arbitrarily and without good cause
7 and without giving notice as hereinafter provided
8 notwithstanding any term or provision of a franchise or
9 selling agreement.

10 (A) If a manufacturer, distributor, wholesaler,
11 distributor branch or division, factory branch or
12 division or wholesale branch or division intends to
13 cancel or terminate a franchise or selling agreement or
14 intends not to extend or renew a franchise or selling
15 agreement on its expiration, it shall send a letter by
16 certified mail, return receipt requested, to the
17 affected franchisee at least 60 days before the
18 effective date of the proposed action, or not later
19 than 10 days before the proposed action when the reason
20 for the action is based upon either of the following:

21 (i) the business operations of the franchisee
22 have been abandoned or the franchisee has failed to
23 conduct customary sales and service operations
24 during customary business hours for at least 7
25 consecutive business days unless such closing is
26 due to the suspension or revocation of a license

1 under subsection (b) of Section 5-501 of Illinois
2 Vehicle Code or an act of God, strike or labor
3 difficulty or other cause over which the
4 franchisee has no 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

1 expiration of the franchise or selling agreement. Each
2 notice of proposed action shall include a detailed
3 statement setting forth the specific grounds for the
4 proposed action and shall state that the dealer has
5 only 30 days from receipt of the notice to file with
6 the Motor Vehicle Review Board a written protest
7 against the proposed action.

8 (C) Within 30 days from receipt of the notice under
9 subparagraphs (A) and (B), the franchisee may file with
10 the Board a written protest against the proposed
11 action.

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

20 The manufacturer shall have the burden of proof to
21 establish that good cause exists to cancel or
22 terminate, or fail to extend or renew the franchise or
23 selling agreement of a motor vehicle dealer or
24 franchisee, and to change substantially or modify the
25 sales and service obligations or capital requirements
26 of a motor vehicle dealer as a condition to extending

1 or renewing the existing franchise or selling
2 agreement. The determination whether good cause exists
3 to cancel, terminate, or refuse to renew or extend the
4 franchise or selling agreement, or to change or modify
5 the obligations of the dealer as a condition to offer
6 renewal, replacement, or succession shall be made by
7 the Board under subsection (d) of Section 12 of this
8 Act.

9 (D) Notwithstanding the terms, conditions, or
10 provisions of a franchise or selling agreement, the
11 following shall not constitute good cause for
12 cancelling or terminating or failing to extend or renew
13 the franchise or selling agreement: (i) the change of
14 ownership or executive management of the franchisee's
15 dealership; ~~or~~ (ii) the fact that the franchisee or
16 owner of an interest in the franchise owns, has an
17 investment in, participates in the management of, or
18 holds a license for the sale of the same or any other
19 line make of new motor vehicles; or (iii) suspension or
20 revocation of the franchisee's license pursuant to
21 subsection (b) of Section 5-501 of the Illinois Vehicle
22 Code.

23 (E) The manufacturer may not cancel or terminate,
24 or fail to extend or renew a franchise or selling
25 agreement or change or modify the obligations of the
26 franchisee as a condition to offering a renewal,

1 replacement, or succeeding franchise or selling
2 agreement before the hearing process is concluded as
3 prescribed by this Act, and thereafter, if the Board
4 determines that the manufacturer has failed to meet its
5 burden of proof and that good cause does not exist to
6 allow the proposed action;

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

26 (8) to require or otherwise coerce a motor vehicle

1 dealer to underutilize the motor vehicle dealer's
2 facilities by requiring or otherwise coercing the motor
3 vehicle dealer to exclude or remove from the motor vehicle
4 dealer's facilities operations for selling or servicing of
5 any vehicles for which the motor vehicle dealer has a
6 franchise agreement with another manufacturer,
7 distributor, wholesaler, distribution branch or division,
8 or officer, agent, or other representative thereof;
9 provided, however, that, in light of all existing
10 circumstances, (i) the motor vehicle dealer maintains a
11 reasonable line of credit for each make or line of new
12 motor vehicle, (ii) the new motor vehicle dealer remains in
13 compliance with any reasonable facilities requirements of
14 the manufacturer, (iii) no change is made in the principal
15 management of the new motor vehicle dealer, and (iv) the
16 addition of the make or line of new motor vehicles would be
17 reasonable. The reasonable facilities requirement set
18 forth in item (ii) of subsection (d)(8) shall not include
19 any requirement that a franchisee establish or maintain
20 exclusive facilities, personnel, or display space. Any
21 decision by a motor vehicle dealer to sell additional makes
22 or lines at the motor vehicle dealer's facility shall be
23 presumed to be reasonable, and the manufacturer shall have
24 the burden to overcome that presumption. A motor vehicle
25 dealer must provide a written notification of its intent to
26 add a make or line of new motor vehicles to the

1 manufacturer. If the manufacturer does not respond to the
2 motor vehicle dealer, in writing, objecting to the addition
3 of the make or line within 60 days after the date that the
4 motor vehicle dealer sends the written notification, then
5 the manufacturer shall be deemed to have approved the
6 addition of the make or line; or

7 (9) to use or consider the performance of a motor
8 vehicle dealer relating to the sale of the manufacturer's,
9 distributor's, or wholesaler's vehicles or the motor
10 vehicle dealer's ability to satisfy any minimum sales or
11 market share quota or responsibility relating to the sale
12 of the manufacturer's, distributor's, or wholesaler's new
13 vehicles in determining:

14 (A) the motor vehicle dealer's eligibility to
15 purchase program, certified, or other used motor
16 vehicles from the manufacturer, distributor, or
17 wholesaler;

18 (B) the volume, type, or model of program,
19 certified, or other used motor vehicles that a motor
20 vehicle dealer is eligible to purchase from the
21 manufacturer, distributor, or wholesaler;

22 (C) the price of any program, certified, or other
23 used motor vehicle that the dealer is eligible to
24 purchase from the manufacturer, distributor, or
25 wholesaler; or

26 (D) the availability or amount of any discount,

1 credit, rebate, or sales incentive that the dealer is
2 eligible to receive from the manufacturer,
3 distributor, or wholesaler for the purchase of any
4 program, certified, or other used motor vehicle
5 offered for sale by the manufacturer, distributor, or
6 wholesaler.

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

10 (1) to resort to or use any false or misleading
11 advertisement in connection with his business as such
12 manufacturer, distributor, wholesaler, distributor branch
13 or division or officer, agent or other representative
14 thereof;

15 (2) to offer to sell or lease, or to sell or lease, any
16 new motor vehicle to any motor vehicle dealer at a lower
17 actual price therefor than the actual price offered to any
18 other motor vehicle dealer for the same model vehicle
19 similarly equipped or to utilize any device including, but
20 not limited to, sales promotion plans or programs which
21 result in such lesser actual price or fail to make
22 available to any motor vehicle dealer any preferential
23 pricing, incentive, rebate, finance rate, or low interest
24 loan program offered to competing motor vehicle dealers in
25 other contiguous states. However, the provisions of this
26 paragraph shall not apply to sales to a motor vehicle

1 dealer for resale to any unit of the United States
2 Government, the State or any of its political subdivisions;

3 (3) to offer to sell or lease, or to sell or lease, any
4 new motor vehicle to any person, except a wholesaler,
5 distributor or manufacturer's employees at a lower actual
6 price therefor than the actual price offered and charged to
7 a motor vehicle dealer for the same model vehicle similarly
8 equipped or to utilize any device which results in such
9 lesser actual price. However, the provisions of this
10 paragraph shall not apply to sales to a motor vehicle
11 dealer for resale to any unit of the United States
12 Government, the State or any of its political subdivisions;

13 (4) to prevent or attempt to prevent by contract or
14 otherwise any motor vehicle dealer or franchisee from
15 changing the executive management control of the motor
16 vehicle dealer or franchisee unless the franchiser, having
17 the burden of proof, proves that such change of executive
18 management will result in executive management control by a
19 person or persons who are not of good moral character or
20 who do not meet the franchiser's existing and, with
21 consideration given to the volume of sales and service of
22 the dealership, uniformly applied minimum business
23 experience standards in the market area. However where the
24 manufacturer rejects a proposed change in executive
25 management control, the manufacturer shall give written
26 notice of his reasons to the dealer within 60 days of

1 notice to the manufacturer by the dealer of the proposed
2 change. If the manufacturer does not send a letter to the
3 franchisee by certified mail, return receipt requested,
4 within 60 days from receipt by the manufacturer of the
5 proposed change, then the change of the executive
6 management control of the franchisee shall be deemed
7 accepted as proposed by the franchisee, and the
8 manufacturer shall give immediate effect to such change;

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

19 (6) to refuse to give effect to or prevent or attempt
20 to prevent by contract or otherwise any motor vehicle
21 dealer or any officer, partner or stockholder of any motor
22 vehicle dealer from selling or transferring any part of the
23 interest of any of them to any other person or persons or
24 party or parties unless such sale or transfer is to a
25 transferee who would not otherwise qualify for a new motor
26 vehicle dealers license under "The Illinois Vehicle Code"

1 or unless the franchiser, having the burden of proof,
2 proves that such sale or transfer is to a person or party
3 who is not of good moral character or does not meet the
4 franchiser's existing and reasonable capital standards
5 and, with consideration given to the volume of sales and
6 service of the dealership, uniformly applied minimum
7 business experience standards in the market area. However,
8 nothing herein shall be construed to prevent a franchiser
9 from implementing affirmative action programs providing
10 business opportunities for minorities or from complying
11 with applicable federal, State or local law:

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

1 that transferee. Within 30 days from the franchisee's
2 receipt of the manufacturer's notice, the franchisee
3 may file with the Board a written protest against the
4 proposed action.

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

13 The manufacturer shall have the burden of proof to
14 establish that good cause exists to refuse to approve
15 the sale or transfer to the transferee. The
16 determination whether good cause exists to refuse to
17 approve the sale or transfer shall be made by the Board
18 under subdivisions (6)(B). The manufacturer shall not
19 refuse to approve the sale or transfer by a dealer or
20 an officer, partner, or stockholder of a franchise or
21 any part of the interest to any person or persons
22 before the hearing process is concluded as prescribed
23 by this Act, and thereafter if the Board determines
24 that the manufacturer has failed to meet its burden of
25 proof and that good cause does not exist to refuse to
26 approve the sale or transfer to the transferee.

1 (B) Good cause to refuse to approve such sale or
2 transfer under this Section is established when such
3 sale or transfer is to a transferee who would not
4 otherwise qualify for a new motor vehicle dealers
5 license under "The Illinois Vehicle Code" or such sale
6 or transfer is to a person or party who is not of good
7 moral character or does not meet the franchiser's
8 existing and reasonable capital standards and, with
9 consideration given to the volume of sales and service
10 of the dealership, uniformly applied minimum business
11 experience standards in the market area.

12 (7) to obtain money, goods, services, anything of
13 value, or any other benefit from any other person with whom
14 the motor vehicle dealer does business, on account of or in
15 relation to the transactions between the dealer and the
16 other person as compensation, except for services actually
17 rendered, unless such benefit is promptly accounted for and
18 transmitted to the motor vehicle dealer;

19 (8) to grant an additional franchise in the relevant
20 market area of an existing franchise of the same line make
21 or to relocate an existing motor vehicle dealership within
22 or into a relevant market area of an existing franchise of
23 the same line make. However, if the manufacturer wishes to
24 grant such an additional franchise to an independent person
25 in a bona fide relationship in which such person is
26 prepared to make a significant investment subject to loss

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

24 When a protest has been timely filed, the Board shall
25 enter an order fixing a date (within 60 days of the date of
26 the order), time, and place of a hearing on the protest,

1 required under Sections 12 and 29 of this Act, and send by
2 certified or registered mail, return receipt requested, a
3 copy of the order to the manufacturer that filed the notice
4 of intention to grant or establish the proposed additional
5 or relocated franchise and to the protesting dealer or
6 dealers of the same line make whose relevant market area
7 includes the proposed location of the additional or
8 relocated franchise.

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

23 The determination whether good cause exists for
24 allowing the grant or establishment of an additional
25 franchise or relocated existing franchise, shall be made by
26 the Board under subsection (c) of Section 12 of this Act.

1 If the manufacturer seeks to enter into a contract,
2 agreement or other arrangement with any person,
3 establishing any additional motor vehicle dealership or
4 other facility, limited to the sale of factory repurchase
5 vehicles or late model vehicles, then the manufacturer
6 shall follow the notice procedures set forth in this
7 Section and the determination whether good cause exists for
8 allowing the proposed agreement shall be made by the Board
9 under subsection (c) of Section 12, with the manufacturer
10 having the burden of proof.

11 A. (Blank).

12 B. For the purposes of this Section, appointment of
13 a successor motor vehicle dealer at the same location
14 as its predecessor, or within 2 miles of such location,
15 or the relocation of an existing dealer or franchise
16 within 2 miles of the relocating dealer's or
17 franchisee's existing location, shall not be construed
18 as a grant, establishment or the entering into of an
19 additional franchise or selling agreement, or a
20 relocation of an existing franchise. The reopening of a
21 motor vehicle dealership that has not been in operation
22 for 18 months or more shall be deemed the grant of an
23 additional franchise or selling agreement.

24 C. This Section does not apply to the relocation of
25 an existing dealership or franchise in a county having
26 a population of more than 300,000 persons when the new

1 location is within the dealer's current relevant
2 market area, provided the new location is more than 7
3 miles from the nearest dealer of the same line make.
4 This Section does not apply to the relocation of an
5 existing dealership or franchise in a county having a
6 population of less than 300,000 persons when the new
7 location is within the dealer's current relevant
8 market area, provided the new location is more than 12
9 miles from the nearest dealer of the same line make. A
10 dealer that would be farther away from the new location
11 of an existing dealership or franchise of the same line
12 make after a relocation may not file a written protest
13 against the relocation with the Motor Vehicle Review
14 Board.

15 D. Nothing in this Section shall be construed to
16 prevent a franchiser from implementing affirmative
17 action programs providing business opportunities for
18 minorities or from complying with applicable federal,
19 State or local law;

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

24 (10) to prevent or refuse to give effect to the
25 succession to the ownership or management control of a
26 dealership by any legatee under the will of a dealer or to

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

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

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

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

1 (A) If the franchiser intends to refuse to honor
2 the successor to the ownership of a deceased or
3 incapacitated dealer or franchisee under an existing
4 franchise agreement, the franchiser shall send a
5 letter by certified mail, return receipt requested, to
6 the designated successor within 60 days from receipt of
7 a proposal advising of its intent to refuse to honor
8 the succession and to discontinue the existing
9 franchise agreement and shall state that the
10 designated successor only has 30 days from the receipt
11 of the notice to file with the Motor Vehicle Review
12 Board a written protest against the proposed action.
13 The notice shall set forth the specific grounds for the
14 refusal to honor the succession and discontinue the
15 existing franchise agreement.

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

21 Within 30 days from the date the notice was
22 received by the designated successor or any other
23 person entitled to notice, the designee or other person
24 may file with the Board a written protest against the
25 proposed action.

26 When a protest has been timely filed, the Board

1 shall enter an order, fixing a date (within 60 days of
2 the date of the order), time, and place of a hearing on
3 the protest, required under Sections 12 and 29 of this
4 Act, and send by certified mail, return receipt
5 requested, a copy of the order to the franchiser that
6 filed the notice of intention of the proposed action
7 and to the protesting designee or such other person.

8 The manufacturer shall have the burden of proof to
9 establish that good cause exists to refuse to honor the
10 succession and discontinue the existing franchise
11 agreement. The determination whether good cause exists
12 to refuse to honor the succession shall be made by the
13 Board under subdivision (B) of this paragraph (10). The
14 manufacturer shall not refuse to honor the succession
15 or discontinue the existing franchise agreement before
16 the hearing process is concluded as prescribed by this
17 Act, and thereafter if the Board determines that it has
18 failed to meet its burden of proof and that good cause
19 does not exist to refuse to honor the succession and
20 discontinue the existing franchise agreement.

21 (B) No manufacturer shall impose any conditions
22 upon honoring the succession and continuing the
23 existing franchise agreement with the designated
24 successor other than that the franchisee has
25 designated a successor to the ownership or management
26 control under the succession provisions of the

1 franchise, or that the designated successor is of good
2 moral character or meets the reasonable capital
3 standards and, with consideration given to the volume
4 of sales and service of the dealership, uniformly
5 applied minimum business experience standards in the
6 market area;

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

1 (12) to prevent or refuse to grant a franchise to a
2 person because such person owns, has investment in or
3 participates in the management of or holds a franchise for
4 the sale of another make or line of motor vehicles within 7
5 miles of the proposed franchise location in a county having
6 a population of more than 300,000 persons, or within 12
7 miles of the proposed franchise location in a county having
8 a population of less than 300,000 persons; or

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

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

1 except that, this subsection shall not prohibit the ownership
2 or operation of a place of business by a manufacturer,
3 distributor, or wholesaler for a period, not to exceed 18
4 months, during the transition from one motor vehicle franchisee
5 to another; or the investment in a motor vehicle franchisee by
6 a manufacturer, distributor, or wholesaler if the investment is
7 for the sole purpose of enabling a partner or shareholder in
8 that motor vehicle franchisee to acquire an interest in that
9 motor vehicle franchisee and that partner or shareholder is not
10 otherwise employed by or associated with the manufacturer,
11 distributor, or wholesaler and would not otherwise have the
12 requisite capital investment funds to invest in the motor
13 vehicle franchisee, and has the right to purchase the entire
14 equity interest of the manufacturer, distributor, or
15 wholesaler in the motor vehicle franchisee within a reasonable
16 period of time not to exceed 5 years.

17 (g) Notwithstanding the terms, provisions, or conditions
18 of any agreement or waiver, it shall be deemed a violation for
19 a manufacturer, a distributor, a wholesaler, a distributor
20 branch or division, a factory branch or division, or a
21 wholesale branch or division, or officer, agent or other
22 representative thereof, to directly or indirectly condition
23 the awarding of a franchise to a prospective new motor vehicle
24 dealer, the addition of a line make or franchise to an existing
25 dealer, the renewal of a franchise of an existing dealer, the
26 approval of the relocation of an existing dealer's facility, or

1 the approval of the sale or transfer of the ownership of a
2 franchise on the willingness of a dealer, proposed new dealer,
3 or owner of an interest in the dealership facility to enter
4 into a site control agreement or exclusive use agreement unless
5 separate and reasonable consideration was offered and accepted
6 for that agreement.

7 For purposes of this subsection (g), the terms "site
8 control agreement" and "exclusive use agreement" include any
9 agreement that has the effect of either (i) requiring that the
10 dealer establish or maintain exclusive dealership facilities;
11 or (ii) restricting the ability of the dealer, or the ability
12 of the dealer's lessor in the event the dealership facility is
13 being leased, to transfer, sell, lease, or change the use of
14 the dealership premises, whether by sublease, lease,
15 collateral pledge of lease, or other similar agreement. "Site
16 control agreement" and "exclusive use agreement" also include a
17 manufacturer restricting the ability of a dealer to transfer,
18 sell, or lease the dealership premises by right of first
19 refusal to purchase or lease, option to purchase, or option to
20 lease if the transfer, sale, or lease of the dealership
21 premises is to a person who is an immediate family member of
22 the dealer. For the purposes of this subsection (g), "immediate
23 family member" means a spouse, parent, son, daughter,
24 son-in-law, daughter-in-law, brother, and sister.

25 If a manufacturer exercises any right of first refusal to
26 purchase or lease or option to purchase or lease with regard to

1 a transfer, sale, or lease of the dealership premises to a
2 person who is not an immediate family member of the dealer,
3 then (1) within 60 days from the receipt of the completed
4 application forms generally utilized by a manufacturer to
5 conduct its review and a copy of all agreements regarding the
6 proposed transfer, the manufacturer must notify the dealer of
7 its intent to exercise the right of first refusal to purchase
8 or lease or option to purchase or lease and (2) the exercise of
9 the right of first refusal to purchase or lease or option to
10 purchase or lease must result in the dealer receiving
11 consideration, terms, and conditions that either are the same
12 as or greater than that which they have contracted to receive
13 in connection with the proposed transfer, sale, or lease of the
14 dealership premises.

15 Any provision contained in any agreement entered into on or
16 after the effective date of this amendatory Act of the 96th
17 General Assembly that is inconsistent with the provisions of
18 this subsection (g) shall be voidable at the election of the
19 affected dealer, prospective dealer, or owner of an interest in
20 the dealership facility.

21 (h) For purposes of this subsection:

22 "Successor manufacturer" means any motor vehicle
23 manufacturer that, on or after January 1, 2009, acquires,
24 succeeds to, or assumes any part of the business of another
25 manufacturer, referred to as the "predecessor manufacturer",
26 as the result of any of the following:

1 (i) A change in ownership, operation, or control of the
2 predecessor manufacturer by sale or transfer of assets,
3 corporate stock or other equity interest, assignment,
4 merger, consolidation, combination, joint venture,
5 redemption, court-approved sale, operation of law or
6 otherwise.

7 (ii) The termination, suspension, or cessation of a
8 part or all of the business operations of the predecessor
9 manufacturer.

10 (iii) The discontinuance of the sale of the product
11 line.

12 (iv) A change in distribution system by the predecessor
13 manufacturer, whether through a change in distributor or
14 the predecessor manufacturer's decision to cease
15 conducting business through a distributor altogether.

16 "Former Franchisee" means a new motor vehicle dealer that
17 has entered into a franchise with a predecessor manufacturer
18 and that has either:

19 (i) entered into a termination agreement or deferred
20 termination agreement with a predecessor or successor
21 manufacturer related to such franchise; or

22 (ii) has had such franchise canceled, terminated,
23 nonrenewed, noncontinued, rejected, nonassumed, or
24 otherwise ended.

25 For a period of 3 years from: (i) the date that a successor
26 manufacturer acquires, succeeds to, or assumes any part of the

1 business of a predecessor manufacturer; (ii) the last day that
2 a former franchisee is authorized to remain in business as a
3 franchised dealer with respect to a particular franchise under
4 a termination agreement or deferred termination agreement with
5 a predecessor or successor manufacturer; (iii) the last day
6 that a former franchisee that was cancelled, terminated,
7 nonrenewed, noncontinued, rejected, nonassumed, or otherwise
8 ended by a predecessor or successor manufacturer is authorized
9 to remain in business as a franchised dealer with respect to a
10 particular franchise; or (iv) the effective date of this
11 amendatory Act of the 96th General Assembly, whichever is
12 latest, it shall be unlawful for such successor manufacturer to
13 enter into a same line make franchise with any person or to
14 permit the relocation of any existing same line make franchise,
15 for a line make of the predecessor manufacturer that would be
16 located or relocated within the relevant market area of a
17 former franchisee who owned or leased a dealership facility in
18 that relevant market area without first offering the additional
19 or relocated franchise to the former franchisee, or the
20 designated successor of such former franchisee in the event the
21 former franchisee is deceased or disabled, at no cost and
22 without any requirements or restrictions other than those
23 imposed generally on the manufacturer's other franchisees at
24 that time, unless one of the following applies:

25 (1) As a result of the former franchisee's
26 cancellation, termination, noncontinuance, or nonrenewal

1 of the franchise, the predecessor manufacturer had
2 consolidated the line make with another of its line makes
3 for which the predecessor manufacturer had a franchisee
4 with a then-existing dealership facility located within
5 that relevant market area.

6 (2) The successor manufacturer has paid the former
7 franchisee, or the designated successor of such former
8 franchisee in the event the former franchisee is deceased
9 or disabled, the fair market value of the former
10 franchisee's franchise on (i) the date the franchisor
11 announces the action which results in the termination,
12 cancellation, or nonrenewal; or (ii) the date the action
13 which results in termination, cancellation, or nonrenewal
14 first became general knowledge; or (iii) the day 12 months
15 prior to the date on which the notice of termination,
16 cancellation, or nonrenewal is issued, whichever amount is
17 higher. Payment is due within 90 days of the effective date
18 of the termination, cancellation, or nonrenewal. If the
19 termination, cancellation, or nonrenewal is due to a
20 manufacturer's change in distributors, the manufacturer
21 may avoid paying fair market value to the dealer if the new
22 distributor or the manufacturer offers the dealer a
23 franchise agreement with terms acceptable to the dealer.

24 (3) The successor manufacturer proves that it would
25 have had good cause to terminate the franchise agreement of
26 the former franchisee, or the successor of the former

1 franchisee under item (e)(10) in the event that the former
2 franchisee is deceased or disabled. The determination of
3 whether the successor manufacturer would have had good
4 cause to terminate the franchise agreement of the former
5 franchisee, or the successor of the former franchisee,
6 shall be made by the Board under subsection (d) of Section
7 12. A successor manufacturer that seeks to assert that it
8 would have had good cause to terminate a former franchisee,
9 or the successor of the former franchisee, must file a
10 petition seeking a hearing on this issue before the Board
11 and shall have the burden of proving that it would have had
12 good cause to terminate the former franchisee or the
13 successor of the former franchisee. No successor dealer,
14 other than the former franchisee, may be appointed or
15 franchised by the successor manufacturer within the
16 relevant market area of the former franchisee until the
17 Board has held a hearing and rendered a determination on
18 the issue of whether the successor manufacturer would have
19 had good cause to terminate the former franchisee.

20 In the event that a successor manufacturer attempts to
21 enter into a same line make franchise with any person or to
22 permit the relocation of any existing line make franchise under
23 this subsection (h) at a location that is within the relevant
24 market area of 2 or more former franchisees, then the successor
25 manufacturer may not offer it to any person other than one of
26 those former franchisees unless the successor manufacturer can

1 prove that at least one of the 3 exceptions in items (1), (2),
2 and (3) of this subsection (h) applies to each of those former
3 franchisees.

4 (Source: P.A. 96-11, eff. 5-22-09; 96-824, eff. 11-25-09.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.".