

AN ACT concerning business.

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

Section 5. The Motor Vehicle Franchise Act is amended by changing Sections 2, 4, 6, and 9 and by adding Section 9.5 as follows:

(815 ILCS 710/2) (from Ch. 121 1/2, par. 752)

Sec. 2. Definitions. As used in this Act, the following words shall, unless the context otherwise requires, have the following meanings:

(a) "Motor vehicle", any motor driven vehicle required to be registered under "The Illinois Vehicle Code". Beginning January 1, 2010, the term "motor vehicle" also includes any engine, transmission, or rear axle, regardless of whether it is attached to a vehicle chassis, that is manufactured for installation in any motor-driven vehicle with a gross vehicle weight rating of more than 16,000 pounds that is required to be registered under the Illinois Vehicle Code.

(b) "Manufacturer", any person engaged in the business of manufacturing or assembling new and unused motor vehicles.

(c) "Factory branch", a branch office maintained by a manufacturer which manufactures or assembles motor vehicles for sale to distributors or motor vehicle dealers or which is

maintained for directing and supervising the representatives of the manufacturer.

(d) "Distributor branch", a branch office maintained by a distributor or wholesaler who or which sells or distributes new or used motor vehicles to motor vehicle dealers.

(e) "Factory representative", a representative employed by a manufacturer or employed by a factory branch for the purpose of making or promoting the sale of motor vehicles or for contracting with, supervising, servicing or instructing motor vehicle dealers or prospective motor vehicle dealers.

(f) "Distributor representative", a representative employed by a distributor branch, distributor or wholesaler.

(g) "Distributor" or "wholesaler", any person who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains distributor representatives within the State.

(h) "Motor vehicle dealer", any person who, in the ordinary course of business, is engaged in the business of selling new or used motor vehicles to consumers or other end users.

(i) "Franchise", an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or wholesaler grants to a motor vehicle dealer a license to use a trade name, service mark, or related characteristic, and in which there is a community of interest in the marketing of motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

(j) "Franchiser", a manufacturer, distributor or

wholesaler who grants a franchise to a motor vehicle dealer.

(k) "Franchisee", a motor vehicle dealer to whom a franchise is offered or granted.

(l) "Sale", shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract or solicitation, looking to a sale, or offer or attempt to sell in any form, whether oral or written. A gift or delivery of any motor vehicle or franchise with respect thereto with or as a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

(m) "Fraud", shall include, in addition to its normal legal connotation, the following: a misrepresentation in any manner, whether intentionally false or due to reckless disregard for truth or falsity, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

(n) "Person", a natural person, corporation, partnership, trust or other entity, and in case of an entity, it shall include any other entity in which it has a majority interest or which it effectively controls as well as the individual officers, directors and other persons in active control of the activities of each such entity.

(o) "New motor vehicle", a motor vehicle which has not been

previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

(p) "Market Area", the franchisee's area of primary responsibility as defined in its franchise.

(q) "Relevant Market Area", the area within a radius of 10 miles from the principal location of a franchise or dealership if said principal location is in a county having a population of more than 300,000 persons; if the principal location of a franchise or dealership is in a county having a population of less than 300,000 persons, then "relevant market area" shall mean the area within a radius of 15 miles from the principal location of said franchise or dealership.

(r) "Late model vehicle" means a vehicle of the current model year and one, 2, or 3 preceding model years for which the motor vehicle dealer holds an existing franchise from the manufacturer for that same line make.

(s) "Factory repurchase vehicle" means a motor vehicle of the current model year or a late model vehicle reacquired by the manufacturer under an existing agreement or otherwise from a fleet, lease or daily rental company or under any State or federal law or program relating to allegedly defective new motor vehicles, and offered for sale and resold by the manufacturer directly or at a factory authorized or sponsored auction.

(t) "Board" means the Motor Vehicle Review Board created under this Act.

(u) "Secretary of State" means the Secretary of State of Illinois.

(v) "Good cause" means facts establishing commercial reasonableness in lawful or privileged competition and business practices as defined at common law.

(Source: P.A. 95-678, eff. 10-11-07.)

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

Sec. 4. Unfair competition and practices.

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

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

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

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

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

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

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

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

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

(3) to refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order, to any motor vehicle dealer having a franchise or selling agreement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, any such motor vehicles as are covered by such franchise or selling agreement specifically publicly advertised in the State by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this Act if such failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of manufacturing capacity, a freight embargo or other cause over which the manufacturer, distributor, or wholesaler,

or any agent thereof has no control;

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

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

(6) to cancel or terminate the franchise or selling agreement of a motor vehicle dealer without good cause and without giving notice as hereinafter provided; to fail or refuse to extend the franchise or selling agreement of a

motor vehicle dealer upon its expiration without good cause and without giving notice as hereinafter provided; or, to offer a renewal, replacement or succeeding franchise or selling agreement containing terms and provisions the effect of which is to substantially change or modify the sales and service obligations or capital requirements of the motor vehicle dealer arbitrarily and without good cause and without giving notice as hereinafter provided notwithstanding any term or provision of a franchise or selling agreement.

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

(i) the business operations of the franchisee have been abandoned or the franchisee has failed to conduct customary sales and service operations during customary business hours for at least 7 consecutive business days unless such closing is

due to an act of God, strike or labor difficulty or other cause over which the franchisee has no control; or

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

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

(B) If a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division intends to change substantially or modify the sales and service obligations or capital requirements of a motor vehicle dealer as a condition to extending or renewing the existing franchise or selling agreement of such motor vehicle dealer, it shall send a letter by certified mail, return receipt requested, to the affected franchisee at least 60 days before the date of expiration of the franchise or selling agreement. Each

notice of proposed action shall include a detailed statement setting forth the specific grounds for the proposed action and shall state that the dealer has only 30 days from receipt of the notice to file with the Motor Vehicle Review Board a written protest against the proposed action.

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

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

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

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

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

~~Good cause shall exist to cancel, terminate or fail to offer a renewal or replacement franchise or selling agreement to all franchisees of a line make if the manufacturer permanently discontinues the manufacture or assembly of motor vehicles of such line make.~~

(E) The manufacturer may not cancel or terminate, or fail to extend or renew a franchise or selling agreement or change or modify the obligations of the

franchisee as a condition to offering a renewal, replacement, or succeeding franchise or selling agreement before the hearing process is concluded as prescribed by this Act, and thereafter, if the Board determines that the manufacturer has failed to meet its burden of proof and that good cause does not exist to allow the proposed action; ~~or~~

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

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

add a make or line of new motor vehicles to the manufacturer. If the manufacturer does not respond to the motor vehicle dealer, in writing, objecting to the addition of the make or line within 60 days after the date that the motor vehicle dealer sends the written notification, then the manufacturer shall be deemed to have approved the addition of the make or line; or

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

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

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

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

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

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

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

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

paragraph shall not apply to sales to a motor vehicle dealer for resale to any unit of the United States Government, the State or any of its political subdivisions;

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

(4) to prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or franchisee from changing the executive management control of the motor vehicle dealer or franchisee unless the franchiser, having the burden of proof, proves that such change of executive management will result in executive management control by a person or persons who are not of good moral character or who do not meet the franchiser's existing and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards in the market area. However where the manufacturer rejects a proposed change in executive management control, the manufacturer shall give written

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

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

(6) to refuse to give effect to or prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties unless such sale or transfer is to a transferee who would not otherwise qualify for a new motor

vehicle dealers license under "The Illinois Vehicle Code" or unless the franchiser, having the burden of proof, proves that such sale or transfer is to a person or party who is not of good moral character or does not meet the franchiser's existing and reasonable capital standards and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards in the market area. However, nothing herein shall be construed to prevent a franchiser from implementing affirmative action programs providing business opportunities for minorities or from complying with applicable federal, State or local law:

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

grounds for refusing to approve the sale or transfer to that transferee. Within 30 days from the franchisee's receipt of the manufacturer's notice, the franchisee may file with the Board a written protest against the proposed action.

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

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

approve the sale or transfer to the transferee.

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

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

(8) to grant an additional franchise in the relevant market area of an existing franchise of the same line make or to relocate an existing motor vehicle dealership within or into a relevant market area of an existing franchise of the same line make. However, if the manufacturer wishes to grant such an additional franchise to an independent person in a bona fide relationship in which such person is

prepared to make a significant investment subject to loss in such a dealership, or if the manufacturer wishes to relocate an existing motor vehicle dealership, then the manufacturer shall send a letter by certified mail, return receipt requested, to each existing dealer or dealers of the same line make whose relevant market area includes the proposed location of the additional or relocated franchise at least 60 days before the manufacturer grants an additional franchise or relocates an existing franchise of the same line make within or into the relevant market area of an existing franchisee of the same line make. Each notice shall set forth the specific grounds for the proposed grant of an additional or relocation of an existing franchise and shall state that the dealer has only 30 days from the date of receipt of the notice to file with the Motor Vehicle Review Board a written protest against the proposed action. Unless the parties agree upon the grant or establishment of the additional or relocated franchise within 30 days from the date the notice was received by the existing franchisee of the same line make or any person entitled to receive such notice, the franchisee or other person may file with the Board a written protest against the grant or establishment of the proposed additional or relocated franchise.

When a protest has been timely filed, the Board shall enter an order fixing a date (within 60 days of the date of

the order), time, and place of a hearing on the protest, required under Sections 12 and 29 of this Act, and send by certified or registered mail, return receipt requested, a copy of the order to the manufacturer that filed the notice of intention to grant or establish the proposed additional or relocated franchise and to the protesting dealer or dealers of the same line make whose relevant market area includes the proposed location of the additional or relocated franchise.

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

The determination whether good cause exists for allowing the grant or establishment of an additional franchise or relocated existing franchise, shall be made by

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

A. (Blank).

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

C. This Section does not apply to the relocation of an existing dealership or franchise in a county having

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

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

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

(10) to prevent or refuse to give effect to the succession to the ownership or management control of a

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

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

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

Notwithstanding the foregoing, in the event the motor vehicle dealer or franchisee and manufacturer have duly executed an agreement concerning succession rights prior to the dealer's death or incapacitation, the agreement

shall be observed.

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

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

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

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

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

(B) No manufacturer shall impose any conditions upon honoring the succession and continuing the existing franchise agreement with the designated successor other than that the franchisee has designated a successor to the ownership or management

control under the succession provisions of the franchise, or that the designated successor is of good moral character or meets the reasonable capital standards and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards in the market area;

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

with applicable federal, State or local law;

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

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

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

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

(Source: P.A. 94-287, eff. 1-1-06.)

(815 ILCS 710/6) (from Ch. 121 1/2, par. 756)

Sec. 6. Warranty agreements; claims; approval; payment; written disapproval.

(a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall properly fulfill any warranty agreement and adequately and fairly compensate each of

its motor vehicle dealers for labor and parts.

(b) In no event shall such compensation fail to include reasonable compensation for diagnostic work, as well as repair service, labor, and parts. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this Section, the principal factor to be given consideration shall be the prevailing wage rates being paid by the dealer in the relevant market area in which the motor vehicle dealer is doing business, and in no event shall such compensation of a motor vehicle dealer for warranty service be less than the rates charged by such dealer for like service to retail customers for nonwarranty service and repairs. The franchiser shall reimburse the franchisee for any parts provided in satisfaction of a warranty at the prevailing retail price charged by that dealer for the same parts when not provided in satisfaction of a warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of the holders of motor vehicle franchises from the same motor vehicle franchiser for identical merchandise in the geographic area in which the motor vehicle franchisee is engaged in business. All claims, either original or resubmitted, made by motor vehicle dealers hereunder and under Section 5 for such labor and parts shall be either approved or disapproved within 30 days following their

submission. All approved claims shall be paid within 30 days following their approval. The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and each such notice shall state the specific grounds upon which the disapproval is based. The motor vehicle dealer shall be permitted to correct and resubmit such disapproved claims within 30 days of receipt of disapproval. Any claims not specifically disapproved in writing within 30 days from their submission shall be deemed approved and payment shall follow within 30 days. The manufacturer or franchiser shall have the right to require reasonable documentation for claims and to audit such claims within a one year period from the date the claim was paid or credit issued by the manufacturer or franchiser, and to charge back any false or unsubstantiated claims. The audit and charge back provisions of this Section also apply to all other incentive and reimbursement programs for a period of one year ~~18 months~~ after the date the claim was paid or credit issued by the manufacturer or franchiser ~~of the transactions that are subject to audit by the franchiser~~. However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this State that the claim is fraudulent.

(c) The motor vehicle franchiser shall not, by agreement, by restrictions upon reimbursement, or otherwise, restrict the nature and extent of services to be rendered or parts to be

provided so that such restriction prevents the motor vehicle franchisee from satisfying the warranty by rendering services in a good and workmanlike manner and providing parts which are required in accordance with generally accepted standards. Any such restriction shall constitute a prohibited practice.

(d) For the purposes of this Section, the "prevailing retail price charged by that dealer for the same parts" means the price paid by the motor vehicle franchisee for parts, including all shipping and other charges, multiplied by the sum of 1.0 and the franchisee's average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchiser and sold at retail. The motor vehicle franchisee may establish average percentage markup under this Section by submitting to the motor vehicle franchiser 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the motor vehicle franchiser and adjustment of the average percentage markup based on that audit. Any audit must be conducted within 30 days following the declaration. Only retail sales not involving warranty repairs, parts covered by subsection (e) of this Section, or parts supplied for routine

vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchiser shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part by part or transaction by transaction calculations. A motor vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year.

(e) If a motor vehicle franchiser supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchiser. The requirements of this subsection (e) shall not apply to entire engine assemblies and entire transmission assemblies. In the case of those assemblies, the motor vehicle franchiser shall reimburse the motor vehicle franchisee in the amount of 30% of what the motor vehicle franchisee would have paid the motor vehicle franchiser for the assembly if the assembly had not been supplied by the franchiser other than by the sale of that assembly to the motor vehicle franchisee.

(f) The obligations imposed on motor vehicle franchisers by

this Section shall apply to any parent, subsidiary, affiliate, or agent of the motor vehicle franchiser, any person under common ownership or control, any employee of the motor vehicle franchiser, and any person holding 1% or more of the shares of any class of securities or other ownership interest in the motor vehicle franchiser, if a warranty or service or repair plan is issued by that person instead of or in addition to one issued by the motor vehicle franchiser.

(g) (1) Any motor vehicle franchiser and at least a majority of its Illinois franchisees of the same line make may agree in an express written contract citing this Section upon a uniform warranty reimbursement policy used by contracting franchisees to perform warranty repairs. The policy shall only involve either reimbursement for parts used in warranty repairs or the use of a Uniform Time Standards Manual, or both. Reimbursement for parts under the agreement shall be used instead of the franchisees' "prevailing retail price charged by that dealer for the same parts" as defined in this Section to calculate compensation due from the franchiser for parts used in warranty repairs. This Section does not authorize a franchiser and its Illinois franchisees to establish a uniform hourly labor reimbursement.

Each franchiser shall only have one such agreement with each line make. Any such agreement shall:

(A) Establish a uniform parts reimbursement rate. The uniform parts reimbursement rate shall be greater than the

franchiser's nationally established parts reimbursement rate in effect at the time the first such agreement becomes effective; however, any subsequent agreement shall result in a uniform reimbursement rate that is greater or equal to the rate set forth in the immediately prior agreement.

(B) Apply to all warranty repair orders written during the period that the agreement is effective.

(C) Be available, during the period it is effective, to any motor vehicle franchisee of the same line make at any time and on the same terms.

(D) Be for a term not to exceed 3 years so long as any party to the agreement may terminate the agreement upon the annual anniversary of the agreement and with 30 days' prior written notice; however, the agreement shall remain in effect for the term of the agreement regardless of the number of dealers of the same line make that may terminate the agreement.

(2) A franchiser that enters into an agreement with its franchisees pursuant to paragraph (1) of this subsection (g) may seek to recover its costs from only those franchisees that are receiving their "prevailing retail price charged by that dealer" under subsections (a) through (f) of this Section, subject to the following requirements:

(A) "costs" means the difference between the uniform reimbursement rate set forth in an agreement entered into pursuant to paragraph (1) of this subsection (g) and the

"prevailing retail price charged by that dealer" received by those franchisees of the same line make. "Costs" do not include the following: legal fees or expenses; administrative expenses; a profit mark-up; or any other item;

(B) the costs shall be recovered only by increasing the invoice price on new vehicles received by those franchisees; and

(C) price increases imposed for the purpose of recovering costs imposed by this Section may vary from time to time and from model to model, but shall apply uniformly to all franchisees of the same line make in the State of Illinois that have requested reimbursement for warranty repairs at their "prevailing retail price charged by that dealer", except that a franchiser may make an exception for vehicles that are titled in the name of a consumer in another state.

(3) If a franchiser contracts with its Illinois dealers pursuant to paragraph (1) of this subsection (g), the franchiser shall certify under oath to the Motor Vehicle Review Board that a majority of the franchisees of that line make did agree to such an agreement and file a sample copy of the agreement. On an annual basis, each franchiser shall certify under oath to the Motor Vehicle Review Board that the reimbursement costs it recovers under paragraph (2) of this subsection (g) do not exceed the amounts authorized by

paragraph (2) of this subsection (g). The franchiser shall maintain for a period of 3 years a file that contains the information upon which its certification is based.

(3.1) A franchiser subject to subdivision (g)(2) of this Section, upon request of a dealer subject to that subdivision, shall disclose to the dealer, in writing or in person if requested by the dealer, the method by which the franchiser calculated the amount of the costs to be reimbursed by the dealer. The franchiser shall also provide aggregate data showing (i) the total costs the franchiser incurred and (ii) the total number of new vehicles invoiced to each dealer that received the "prevailing retail price charged by that dealer" during the relevant period of time. In responding to a dealer's request under this subdivision (g)(3.1), a franchiser may not disclose any confidential or competitive information regarding any other dealer. Any dealer who receives information from a franchiser under this subdivision (g)(3.1) may not disclose that information to any third party unless the disclosure occurs in the course of a lawful proceeding before, or upon the order of, the Motor Vehicle Review Board or a court of competent jurisdiction.

(4) If a franchiser and its franchisees do not enter into an agreement pursuant to paragraph (1) of this subsection (g), and for any matter that is not the subject of an agreement, this subsection (g) shall have no effect whatsoever.

(5) For purposes of this subsection (g), a Uniform Time

Standard Manual is a document created by a franchiser that establishes the time allowances for the diagnosis and performance of warranty work and service. The allowances shall be reasonable and adequate for the work and service to be performed. Each franchiser shall have a reasonable and fair process that allows a franchisee to request a modification or adjustment of a standard or standards included in such a manual.

(6) A franchiser may not take any adverse action against a franchisee for not having executed an agreement contemplated by this subsection (g) or for receiving the "prevailing retail price charged by that dealer". Nothing in this subsection shall be construed to prevent a franchiser from making a determination of a franchisee's "prevailing retail price charged by that dealer", as provided by this Section.

(Source: P.A. 94-882, eff. 6-20-06.)

(815 ILCS 710/9) (from Ch. 121 1/2, par. 759)

Sec. 9. Renewals; transfers.

(a) Anything to the contrary notwithstanding, it shall be unlawful for the manufacturer, wholesaler, distributor or franchiser without good cause, to fail to renew a franchise on terms then equally available to all its motor vehicle dealers, or to terminate a franchise or restrict the transfer of a franchise until the franchisee shall receive fair and reasonable compensation for the value of the business and

business premises.

(b) For the purposes of this Section 9, the term "reasonable compensation" includes, but is not limited to all of the following items:

(1) An amount equal to the current, fair rental value of the portion of the motor vehicle dealer's established place of business that is used for motor vehicle sales and service with the manufacturer, wholesaler, distributor or franchiser for a period of one year beginning on the date of the nonrenewal, termination, or restriction on the transfer of the franchise.

(2) The franchisee's cost of each new undamaged and unsold current and prior year motor vehicles that were acquired within 12 months of termination and have 500 or fewer miles recorded on the odometer that are in the franchisee's inventory at the time of nonrenewal, termination, or restriction and that were purchased or acquired from the manufacturer or from another dealer of the same line make in the ordinary course of business.

(3) The franchisee's cost of each new, unused, undamaged, and unsold part or accessory that is in the current parts catalogue or is identical to a part or accessory in the current parts catalogue except for the number assigned to the part or accessory due to a change in the number after the purchase of the part or accessory and that is still in the original, resalable merchandising

package and in an unbroken lot, except that, in the case of sheet metal, a comparable substitute for the original package may be used if the part or accessory was purchased (i) directly from the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof or (ii) from an outgoing authorized dealer as a part of the dealer's initial inventory.

(4) The fair market value of each undamaged sign owned by the dealer that bears a trademark or trade name used or claimed by the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof that was purchased as a requirement of the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof.

(5) The fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that (i) were recommended in writing and designated as special tools and equipment, (ii) were purchased at the request of the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof, and (iii) are in usable and good condition except for reasonable wear and tear.

(6) The cost of transporting, handling, packing,

storing, and loading any property that is subject to repurchase under this Section.

This subsection (b) shall not apply to a non-renewal or termination that is implemented as a result of a sale of the assets or stock of the franchise.

(c) The payment under item (b)(1) is due in 12 equal, monthly installments, beginning 30 days after the franchise is terminated or nonrenewed. The payments under items (b)(2) through (b)(6) are due no later than 90 days after the franchise is terminated or nonrenewed. As a condition of payment under items (b)(2) through (b)(6), the motor vehicle dealer must comply with all reasonable requirements provided by the manufacturer, distributor, or wholesaler regarding the return of inventory.

If a manufacturer, distributor, or wholesaler does not reimburse the motor vehicle dealer for the amounts required under items (b)(2) through (b)(6) by the deadlines under this subsection (c), and the Board or, if agreed to under Section 12, the arbitrator, finds the manufacturer, distributor, or wholesaler in violation of this subsection, then the manufacturer, distributor, or wholesaler shall, in addition to any other amounts due, pay the motor vehicle dealer:

(1) interest on the amount due at a rate reasonable in light of commercial practices, determined by the Board or arbitrator; and

(2) reasonable attorney's fees and costs.

(3) reasonable attorney's fees and costs.

(Source: P.A. 83-922.)

(815 ILCS 710/9.5 new)

Sec. 9.5. Termination with good cause.

(a) Anything to the contrary notwithstanding, if a manufacturer, wholesaler, distributor, or franchiser, with good cause, (i) fails to renew a franchise on terms then equally available to all of its motor vehicle dealers, (ii) terminates a franchise, or (iii) restricts the transfer of a franchise, the manufacturer, wholesaler, distributor or franchiser shall pay to the franchisee all of the following, including, but not limited to:

(1) Upon termination, cancellation, or nonrenewal of a line make or upon termination, cancellation, or nonrenewal due to a dealer's poor sales and service performance pursuant to notice provided under Section 4(d)(6), an amount equal to the current, fair rental value of the portion of the motor vehicle dealer's established place of business that is used for motor vehicle sales and service with the manufacturer, wholesaler, distributor or franchiser for a period of one year beginning on the date of the nonrenewal, termination, or restriction on the transfer of the franchise.

(2) The franchisee's cost of each new undamaged and unsold current and prior model year motor vehicles that

were acquired within 12 months of termination and have 500 or fewer miles recorded on the odometer in the franchisee's inventory at the time of nonrenewal, termination, or restriction and that were purchased or acquired from the manufacturer or from another motor vehicle dealer of the same line make in the ordinary course of business.

(3) The franchisee's cost of each new, unused, undamaged, and unsold part or accessory that is in the current parts catalogue or is identical to a part or accessory in the current parts catalogue except for a number assigned to the part or accessory due to a change in the number after the purchase of the part or accessory and that is still in the original, resalable merchandising package and in an unbroken lot, except that, in the case of sheet metal, a comparable substitute for the original package may be used if the part or accessory was purchased (i) directly from the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof or (ii) from an outgoing authorized dealer as a part of the dealer's initial inventory.

(4) The fair market value of each undamaged sign owned by the dealer that bears a trademark or trade name used or claimed by the manufacturer, distributor, wholesaler, distributor branch, or division, or officer, agent, or other representative thereof that was purchased as a

requirement of the manufacturer, distributor, wholesaler, distributor branch, or division, or officer, agent, or other representative thereof.

(5) The fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that (i) were recommended in writing and designated as special tools and equipment, (ii) were purchased at the request of the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof, and (iii) are in usable and good condition except for reasonable wear and tear.

(b) The payment under item (a)(1) is due in 12 equal, monthly installments, beginning 30 days after the franchise is terminated or nonrenewed. The payments under items (a)(2) through (a)(5) are due no later than 90 days after the franchise is terminated or nonrenewed. As a condition of payment under items (a)(2) through (a)(5) the motor vehicle dealer must comply with all reasonable requirements provided by the manufacturer, distributor, or wholesaler regarding the return of inventory.

If a manufacturer, distributor, or wholesaler does not reimburse the motor vehicle dealer for the amounts required under items (a)(2) through (a)(6) by the deadlines under this subsection (b), then the manufacturer, distributor, or wholesaler shall, in addition to any amounts due, pay the motor

vehicle dealer:

(1) interest on the amount due at a rate reasonable in light of commercial practices, determined by the Board or arbitrator; and

(2) reasonable attorney's fees and costs.

(c) This Section does not apply to a termination or nonrenewal that is implemented as a result of the sale of the assets or stock of the franchise.

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