



Sen. Ira I. Silverstein

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1 AMENDMENT TO SENATE BILL 76

2 AMENDMENT NO. _____. Amend Senate Bill 76 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the New
5 Vehicle Buyer Protection Act of 2017.

6 Section 3. Definitions. As used in this Act:

7 "Buyer" or "retail buyer" means any individual or entity
8 who buys a new motor vehicle from a person, including a
9 partnership, limited liability company, corporation,
10 association, or any other legal entity, engaged in the business
11 of manufacturing, distributing, or selling vehicles at retail.

12 "Distributor" means any individual, partnership,
13 corporation, association, or other legal relationship that
14 stands between the manufacturer and the retail seller in
15 purchases, consignments, or contracts for sale of motor
16 vehicles.

1 "Lease" means any contract for the lease or bailment for
2 the use of a motor vehicle by an individual, for a term
3 exceeding 4 months, primarily for personal, family, or
4 household purposes, whether or not it is agreed that the lessee
5 bears the risk of the vehicles' depreciation.

6 "Lessee" means an individual who leases a motor vehicle
7 under a lease.

8 "Manufacturer" means any individual, partnership,
9 corporation, association, or other legal relationship that
10 manufactures, assembles, or produces motor vehicles.

11 "Motor home" means a vehicular unit built on, or
12 permanently attached to, a self-propelled motor vehicle
13 chassis, chassis cab, or van, which becomes an integral part of
14 the completed vehicle, designed for human habitation for
15 recreational or emergency occupancy.

16 "New motor vehicle" means a new motor vehicle that is
17 bought or used primarily for personal, family, or household
18 purposes. "New motor vehicle" also means a new motor vehicle
19 with a gross vehicle weight under 10,000 pounds that is bought
20 or used primarily for business purposes by a person, including
21 a partnership, limited liability company, corporation,
22 association, or any other legal entity, to which not more than
23 5 motor vehicles are registered in this State. "New motor
24 vehicle" includes the chassis, cab, and that portion of a motor
25 home devoted to its propulsion, but does not include any
26 portion designed, used, or maintained primarily for human

1 habitation, a dealer-owned vehicle, and a "demonstrator" or
2 other motor vehicle sold with a manufacturer's new car
3 warranty, but does not include a motorcycle or a motor vehicle
4 which is not registered under the Illinois Vehicle Code because
5 it is to be operated or used exclusively off the highways. A
6 demonstrator is a vehicle assigned by a dealer for the purpose
7 of demonstrating qualities and characteristics common to
8 vehicles of the same or similar model and type.

9 "Nonconformity" means a nonconformity which substantially
10 impairs the use, value, or safety of the new motor vehicle to
11 the buyer or lessee.

12 "Retail seller" or "retailer" means any individual,
13 partnership, corporation, association, or other legal
14 relationship that engages in the business of selling or leasing
15 motor vehicles to retail buyers.

16 "Service contract" means a contract in writing to perform,
17 over a fixed period of time or for a specified duration,
18 services relating to the maintenance or repair of a motor
19 vehicle, except that this term does not include a policy of
20 automobile insurance as defined in Section 143.13 of the
21 Illinois Insurance Code.

22 "Supplier" means any person engaged in the business of
23 making a motor home or new motor vehicle directly or indirectly
24 available to a buyer.

25 "Written warranty" means any undertaking in writing in
26 connection with the sale by a supplier of a consumer product to

1 refund, repair, replace, or take other remedial action with
2 respect to such product in the event that such product fails to
3 meet the specifications set forth in the undertaking.

4 Section 5. Failure to service or repair. If a manufacturer
5 or its representative in this State is unable to service or
6 repair a new motor vehicle or motor home to conform to the
7 applicable written warranties after a reasonable number of
8 attempts, the manufacturer shall either promptly replace the
9 new motor vehicle or motor home in accordance with paragraph
10 (1) or promptly make restitution to the buyer in accordance
11 with paragraph (2). However, the buyer shall be free to elect
12 restitution in lieu of replacement, and in no event shall the
13 buyer be required by the manufacturer to accept a replacement
14 vehicle.

15 (1) In the case of replacement, the manufacturer shall
16 replace the buyer's vehicle with a new motor vehicle or
17 motor home substantially identical to the new motor vehicle
18 or motor home replaced. The replacement vehicle shall be
19 accompanied by all written and implied warranties that
20 normally accompany new motor vehicles or motor homes of
21 that specific kind. The manufacturer also shall pay for, or
22 to, the buyer the amount of any sales or use tax, license
23 fees, registration fees, and other official fees which the
24 buyer is obligated to pay in connection with the
25 replacement, plus any incidental damages to which the buyer

1 is entitled under Section 30, including, but not limited
2 to, reasonable repair, towing, and rental car costs
3 actually incurred by the buyer.

4 (2) In the case of restitution, the manufacturer shall
5 make restitution in an amount equal to the actual price
6 paid or payable by the buyer, including any charges for
7 transportation and manufacturer-installed options, but
8 excluding non-manufacturer items installed by a dealer or
9 the buyer, and including any collateral charges such as
10 sales or use tax, license fees, registration fees, finance
11 interest charges, and other official fees, plus any
12 incidental damages to which the buyer is entitled under
13 Section 30, including, but not limited to, reasonable
14 repair, towing, and rental car costs actually incurred by
15 the buyer.

16 (3) When the manufacturer replaces the new motor
17 vehicle or motor home pursuant to paragraph (1), the buyer
18 shall only be liable to pay the manufacturer an amount
19 directly attributable to use by the buyer of the replaced
20 vehicle prior to the time the buyer first delivered the
21 vehicle to the manufacturer or distributor, or its
22 authorized service and repair facility for correction of
23 the problem that gave rise to the nonconformity. When
24 restitution is made pursuant to paragraph (2), the amount
25 to be paid by the manufacturer to the buyer may be reduced
26 by the manufacturer by that amount directly attributable to

1 use by the buyer prior to the time the buyer first
2 delivered the vehicle to the manufacturer or distributor,
3 or its authorized service and repair facility for
4 correction of the problem that gave rise to the
5 nonconformity. The amount directly attributable to use by
6 the buyer shall be determined by multiplying the actual
7 price of the new motor vehicle or motor home paid or
8 payable by the buyer, including any charges for
9 transportation and manufacturer-installed options, by a
10 fraction having as its denominator 120,000 and having as
11 its numerator the number of miles traveled by the new motor
12 vehicle or motor home prior to the time the buyer first
13 delivered the new motor vehicle or motor home to the
14 manufacturer or distributor, or its authorized service and
15 repair facility for correction of the problem that gave
16 rise to the nonconformity. Nothing in this paragraph shall
17 in any way limit the rights or remedies available to the
18 buyer under any other law.

19 (4) A buyer of a new motor vehicle or motor home shall
20 also include a lessee of a new motor vehicle or motor home.

21 Section 10. Nonconformity.

22 (a) It shall be presumed that a reasonable number of
23 attempts have been made to conform a new motor vehicle or motor
24 home to the applicable written warranties if, within 18 months
25 from delivery to the buyer or 18,000 miles on the odometer of

1 the vehicle, whichever occurs first, one or more of the
2 following occurs:

3 (1) The same nonconformity results in a condition that
4 is likely to cause death or serious bodily injury if the
5 new motor vehicle or motor home is driven and the
6 nonconformity has been subject to repair 2 or more times by
7 the manufacturer or its agents, and the buyer or lessee has
8 at least once directly notified the manufacturer of the
9 need for the repair of the nonconformity.

10 (2) The same nonconformity has been subject to repair 4
11 or more times by the manufacturer or its agents and the
12 buyer has at least once directly notified the manufacturer
13 of the need for the repair of the nonconformity.

14 (3) The vehicle is out of service by reason of repair
15 of nonconformities by the manufacturer or its agents for a
16 cumulative total of more than 30 calendar days since
17 delivery of the new motor vehicle or motor home to the
18 buyer. The 30-day limit shall be extended only if repairs
19 cannot be performed due to conditions beyond the control of
20 the manufacturer or its agents. The buyer shall be required
21 to directly notify the manufacturer pursuant to paragraphs
22 (1) and (2) only if the manufacturer has clearly and
23 conspicuously disclosed to the buyer, with the warranty or
24 the owner's manual, the provisions of this Section and that
25 of Section 5, including the requirement that the buyer must
26 notify the manufacturer directly pursuant to paragraphs

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

8 (b) If a qualified third-party dispute resolution process
9 exists, and the buyer receives timely notification in writing
10 of the availability of that qualified third-party dispute
11 resolution process with a description of its operation and
12 effect, the presumption in subsection (a) may not be asserted
13 by the buyer until after the buyer has initially resorted to
14 the qualified third-party dispute resolution process as
15 required in subsection (c). Notification of the availability of
16 the qualified third-party dispute resolution process is not
17 timely if the buyer suffers any prejudice resulting from any
18 delay in giving the notification. If a qualified third-party
19 dispute resolution process does not exist, or if the buyer is
20 dissatisfied with that third-party decision, or if the
21 manufacturer or its agent neglects to promptly fulfill the
22 terms of the qualified third-party dispute resolution process
23 decision after the decision is accepted by the buyer, the buyer
24 may assert the presumption provided in subsection (a) in an
25 action to enforce the buyer's rights under Section 5. The
26 findings and decision of a qualified third-party dispute

1 resolution process shall be admissible in evidence in the
2 action without further foundation. Any period of limitation of
3 actions under any federal or State laws with respect to any
4 person shall be extended for a period equal to the number of
5 days between the date a complaint is filed with a third-party
6 dispute resolution process and the date of its decision or the
7 date before which the manufacturer or its agent is required by
8 the decision to fulfill its terms if the decision is accepted
9 by the buyer, whichever occurs later.

10 (c) A qualified third-party dispute resolution process
11 shall be one that does all of the following:

12 (1) Complies with the minimum requirements of the
13 Federal Trade Commission for informal dispute settlement
14 procedures as set forth in Part 703 of Title 16 of the Code
15 of Federal Regulations, as those regulations read on
16 January 1, 1987.

17 (2) Renders decisions which are binding on the
18 manufacturer if the buyer elects to accept the decision.

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

23 (4) Provides arbitrators who are assigned to decide
24 disputes with copies of, and instruction in, the provisions
25 of the Federal Trade Commission's regulations in Part 703
26 of Title 16 of the Code of Federal Regulations as those

1 regulations read on January 1, 1987, Article 2 of the
2 Uniform Commercial Code, and this Act.

3 (5) Requires the manufacturer, when the process
4 orders, under the terms of this Act, either that the
5 nonconforming new motor vehicle or motor home be replaced
6 if the buyer consents to this remedy or that restitution be
7 made to the buyer, to replace the new motor vehicle or
8 motor home or make restitution in accordance with Section
9 5.

10 (6) Provides, at the request of the arbitrator or a
11 majority of the arbitration panel, for an inspection and
12 written report on the condition of a nonconforming new
13 motor vehicle, or motor home, at no cost to the buyer, by
14 an automobile expert who is independent of the
15 manufacturer.

16 (7) Takes into account, in rendering decisions, all
17 legal and equitable factors, including, but not limited to,
18 the written warranty, the rights and remedies conferred in
19 regulations of the Federal Trade Commission contained in
20 Part 703 of Title 16 of the Code of Federal Regulations as
21 those regulations read on January 1, 1987, Article 2 of the
22 Uniform Commercial Code, this Act, and any other equitable
23 considerations appropriate in the circumstances. Nothing
24 in this Act requires that, to be certified as a qualified
25 third-party dispute resolution process pursuant to this
26 Section, decisions of the process must consider or provide

1 remedies in the form of awards of punitive damages or
2 multiple damages, under subsection (c) of Section 30, or of
3 attorney's fees under subsection (d) of Section 30, or of
4 consequential damages other than as provided in
5 subsections (a) and (b) of Section 30, including, but not
6 limited to, reasonable repair, towing, and rental car costs
7 actually incurred by the buyer.

8 (8) Requires that no arbitrator deciding a dispute may
9 be a party to the dispute and that no other person,
10 including an employee, agent, or dealer for the
11 manufacturer, may be allowed to participate substantively
12 in the merits of any dispute with the arbitrator unless the
13 buyer is allowed to participate also. Nothing in this
14 subsection prohibits any member of an arbitration from
15 deciding a dispute.

16 (9) Obtains and maintains certification by the
17 Attorney General as provided in Section 35.

18 (d) (1) Except as provided in paragraph (2), no person
19 shall sell, either at wholesale or retail, lease, or transfer a
20 new motor vehicle or motor home transferred by a buyer or
21 lessee to a manufacturer pursuant to Section 5 or a similar
22 statute of any other state, unless the nature of the
23 nonconformity experienced by the original buyer or lessee is
24 clearly and conspicuously disclosed to the prospective buyer,
25 lessee, or transferee, the nonconformity is corrected, and the
26 manufacturer warrants to the new buyer, lessee, or transferee

1 in writing for a period of one year that the new motor vehicle
2 or motor home is free of that nonconformity.

3 (2) Except for the requirement that the nature of the
4 nonconformity be disclosed to the transferee, paragraph (1)
5 does not apply to the transfer of a new motor vehicle or motor
6 home to an educational institution if the purpose of the
7 transfer is to make the new motor vehicle or motor home
8 available for use in automotive repair courses.

9 Section 15. Automotive consumer notification.

10 (a) The General Assembly finds and declares all of the
11 following:

12 (1) That the expansion of state warranty laws covering
13 new and used motor vehicles and motor homes has given
14 important and valuable protection to consumers.

15 (2) That, in states without this valuable warranty
16 protection, used and new motor vehicles and motor homes are
17 being resold in the marketplace without notice to the
18 subsequent purchaser.

19 (3) That other states have addressed this problem by
20 requiring notices on the title of new motor vehicles and
21 motor homes or other notice procedures to warn consumers
22 that the new motor homes vehicles or motor were repurchased
23 by a dealer or manufacturer because the new motor vehicle
24 or motor home could not be repaired in a reasonable length
25 of time or a reasonable number of repair attempts or the

1 dealer or manufacturer was not willing to repair the new
2 motor vehicle or motor home.

3 (4) That these notices serve the interests of consumers
4 who have a right to information relevant to their buying
5 decisions.

6 (5) That the disappearance of these notices upon the
7 transfer of title from another state to this State
8 encourages the transport of "lemons" to this State for sale
9 to the drivers of this State.

10 (b) As used in this Section, "dealer" means any person
11 engaged in the business of selling, offering for sale, or
12 negotiating the retail sale of, a used motor vehicle or motor
13 home or selling new motor vehicles or motor homes as a broker
14 or agent for another, including the officers, agents, and
15 employees of the person and any combination or association of
16 dealers.

17 (c) Any manufacturer who reacquires or assists a dealer or
18 lienholder to reacquire a new motor vehicle or motor home
19 registered in this State, any other state, or a federally
20 administered district shall, prior to any sale, lease, or
21 transfer of the new motor vehicle or motor home in this State,
22 or prior to exporting the new motor vehicle or motor home to
23 another state for sale, lease, or transfer if the new motor
24 vehicle or motor home was registered in this State and
25 reacquired pursuant to Section 5, cause the new motor vehicle
26 or motor home to be retitled in the name of the manufacturer,

1 request the Secretary of State to inscribe the manufacturer's
2 certificate of title with the notation "Lemon Law Buyback", and
3 affix a decal to the new motor vehicle or motor home in
4 accordance with Section 25 if the manufacturer knew or should
5 have known that the new motor vehicle or motor home is required
6 by law to be replaced, accepted for restitution due to the
7 failure of the manufacturer to conform the new motor vehicle or
8 motor home to applicable written warranties pursuant to Section
9 5, or accepted for restitution by the manufacturer due to the
10 failure of the manufacturer to conform the new motor vehicle or
11 motor home to written warranties required by any other
12 applicable law of the State, any other state, or federal law.

13 (d) Any manufacturer who reacquires or assists a dealer or
14 lienholder to reacquire a new motor vehicle or motor home in
15 response to a request by the buyer or lessee that the new motor
16 vehicle or motor home be either replaced or accepted for
17 restitution because the new motor vehicle or motor home did not
18 conform to written warranties shall, prior to the sale, lease,
19 or other transfer of the new motor vehicle or motor home,
20 execute and deliver to the subsequent transferee a notice and
21 obtain the transferee's written acknowledgment of a notice, as
22 prescribed by Section 20.

23 (e) Any person, including any dealer, who acquires a new
24 motor vehicle or motor home for resale and knows or should have
25 known that the new motor vehicle or motor home was reacquired
26 by the manufacturer of the new motor vehicle or motor home in

1 response to a request by the last retail owner or lessee of the
2 new motor vehicle or motor home that it be replaced or accepted
3 for restitution because the new motor vehicle or motor home did
4 not conform to written warranties shall, prior to the sale,
5 lease, or other transfer, execute and deliver to the subsequent
6 transferee a notice and obtain the transferee's written
7 acknowledgment of a notice, as prescribed by Section 20.

8 (f) Any person, including any manufacturer or dealer, who
9 sells, leases, or transfers ownership of a new motor vehicle or
10 motor home when the new motor vehicle's or motor home's
11 certificate of title is inscribed with the notation "Lemon Law
12 Buyback" shall, prior to the sale, lease, or ownership transfer
13 of the new motor vehicle or motor home, provide the transferee
14 with a disclosure statement signed by the transferee that
15 states: "THIS NEW MOTOR VEHICLE OR MOTOR HOME WAS REPURCHASED
16 BY ITS MANUFACTURER DUE TO A DEFECT IN THE NEW MOTOR VEHICLE OR
17 MOTOR HOME VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE
18 TITLE TO THIS NEW MOTOR VEHICLE OR MOTOR HOME HAS BEEN
19 PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK"."

20 (g) The disclosure requirements in subsections (d), (e),
21 and (f) are cumulative with all other consumer notice
22 requirements and do not relieve any person, including any
23 dealer or manufacturer, from complying with any other
24 applicable law, including any requirement of subsection (d) of
25 Section 10.

1 Section 20. Warranty buyback notice.

2 (a) The notice required in subsections (d) and (e) of
3 Section 15 shall be prepared by the manufacturer of the
4 reacquired new motor vehicle a motor home and shall disclose
5 all of the following:

6 (1) Year, make, model, and vehicle identification
7 number of the new motor vehicle or motor home.

8 (2) Whether the title to the new motor vehicle or motor
9 home has been inscribed with the notation "Lemon Law
10 Buyback".

11 (3) The nature of each nonconformity reported by the
12 original buyer or lessee of the new motor vehicle or motor
13 home.

14 (4) Repairs, if any, made to the new motor vehicle or
15 motor home in an attempt to correct each nonconformity
16 reported by the original buyer or lessee.

17 (b) The notice shall be on a form 8 1/2 x 11 inches in size
18 and printed in no smaller than 10-point black type on a white
19 background. The form shall only contain the following
20 information prior to it being filled out by the manufacturer:

21 WARRANTY BUYBACK NOTICE

22 (Check One)

23 /. . ./ This new motor vehicle or motor home was repurchased by
24 the manufacturer after the last retail owner or lessee
25 requested its repurchase due to the problem(s) listed below.

1 / . . . / THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO
 2 A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE
 3 TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE
 4 NOTATION "LEMON LAW BUYBACK." Under Illinois law, the
 5 manufacturer must warrant to you, for a one-year period, that
 6 the vehicle is free of the problem(s) listed below.

7 V.I.N: Year: Make: Model:

8	Problem(s) Reported by	Repairs Made, if any, to
9	Original Owner	Correct Reported Problem(s)
10	.....	.....
11	.....	.....
12	.....	.....
13	.....	.....
14	.....	.....
15	.....	.....
16	Signature of Manufacturer	Date
17	.....	.....
18	Signature of Dealer(s)	Date
19
20
21
22	Signature of Retail Buyer or	Date
23	Lessee	
24

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2 (c) The manufacturer shall provide an executed copy of the
3 notice to the manufacturer's transferee. Each transferee,
4 including a dealer, to whom the new motor vehicle or motor home
5 is transferred prior to its sale to a retail buyer or lessee
6 shall be provided an executed copy of the notice by the
7 previous transferor.

8 Section 25. Lemon decal.

9 (a) The decal required by subsection (c) of Section 15 to
10 be affixed by a manufacturer to a new motor vehicle or motor
11 home, shall be affixed to the left front door frame of the new
12 motor vehicle or motor home, or, if the new motor vehicle or
13 motor home does not have a left front door frame, it shall be
14 affixed in a location designated by the Secretary of State. The
15 decal shall specify that title to new the motor vehicle or
16 motor home has been inscribed with the notation "Lemon Law
17 Buyback" and shall be affixed to the new motor vehicle or motor
18 home in a manner prescribed by the Secretary of State.

19 (b) No person shall knowingly remove or alter any decal
20 affixed to a new motor vehicle or motor home pursuant to
21 subsection (a), whether or not licensed under the Illinois
22 Vehicle Code.

23 Section 30. Remedies.

1 (a) Any buyer of consumer goods who is damaged by a failure
2 to comply with any obligation under this Act or under an
3 implied or written warranty or service contract may bring an
4 action for the recovery of damages and other legal and
5 equitable relief.

6 (b) The measure of the buyer's damages in an action under
7 this Section shall include the rights of replacement or
8 reimbursement as set forth in Section 5, and the following:

9 (1) Where the buyer has rightfully rejected or
10 justifiably revoked acceptance of the goods or has
11 exercised any right to cancel the sale, Sections 2-711,
12 2-712, and 2-713 of the Uniform Commercial Code shall
13 apply.

14 (2) Where the buyer has accepted the goods, Sections
15 2-714 and 2-715 of the Uniform Commercial Code shall apply,
16 and the measure of damages shall include the cost of
17 repairs necessary to make the goods conform.

18 (c) If the buyer establishes that the failure to comply was
19 willful, the judgment may include, in addition to the amounts
20 recovered under subsection (a), a civil penalty which shall not
21 exceed 2 times the amount of actual damages. This subsection
22 shall not apply in any class action under Section 2-404 of the
23 Code of Civil Procedure or with respect to a claim based solely
24 on a breach of an implied warranty.

25 (d) If the buyer prevails in an action under this Section,
26 including before a qualified third-party dispute resolution

1 process, the buyer shall be allowed by the court to recover as
2 part of the judgment a sum equal to the aggregate amount of
3 costs and expenses, including attorney's fees based on actual
4 time expended, determined by the court to have been reasonably
5 incurred by the buyer in connection with the commencement and
6 prosecution of such action.

7 (e) (1) Except as otherwise provided in this subsection, if
8 the buyer establishes a violation of Section 5, the buyer shall
9 recover damages and reasonable attorney's fees and costs, and
10 may recover a civil penalty of up to 2 times the amount of
11 damages.

12 (2) If the manufacturer maintains a qualified third-party
13 dispute resolution process which substantially complies with
14 Section 10, the manufacturer shall not be liable for any civil
15 penalty pursuant to this subsection.

16 (3) After the occurrence of the events giving rise to the
17 presumption established in subsection (a) of Section 10, the
18 buyer may serve upon the manufacturer a written notice
19 requesting that the manufacturer comply with Section 5. If the
20 buyer fails to serve the notice, the manufacturer shall not be
21 liable for a civil penalty pursuant to this subsection.

22 (4) If the buyer serves the notice described in paragraph
23 (3) and the manufacturer complies with Section 5 within 30 days
24 of the service of that notice, the manufacturer shall not be
25 liable for a civil penalty pursuant to this subsection.

26 (5) If the buyer recovers a civil penalty under subsection

1 (c), the buyer may not also recover a civil penalty under this
2 subsection for the same violation.

3 Section 35. Third-party dispute resolution process
4 certification program; fund.

5 (a) The Attorney General shall establish a program for
6 certifying each third-party dispute resolution process used
7 for the arbitration of disputes pursuant to subsection (b) of
8 Section 10. In establishing the program, the Attorney General
9 shall do all of the following:

10 (1) Prescribe and provide forms to be used to apply for
11 certification under this Act.

12 (2) Establish a set of minimum standards which shall be
13 used to determine whether a third-party dispute resolution
14 process is in substantial compliance with subsection (c) of
15 Section 10.

16 (3) Prescribe the information which each manufacturer,
17 or other entity, that operates a third-party dispute
18 resolution process shall provide the Attorney General in
19 the application for certification. In prescribing the
20 information to accompany the application for
21 certification, the Attorney General shall require the
22 manufacturer, or other entity, to provide only that
23 information which the Attorney General finds is reasonably
24 necessary to enable the Attorney General to determine
25 whether the third-party dispute resolution process is in

1 substantial compliance with subsection (c) of Section 10.

2 (4) Prescribe the information that each qualified
3 third-party dispute resolution process shall provide the
4 Attorney General, and the time intervals at which the
5 information shall be required, to enable the Attorney
6 General to determine whether the qualified third-party
7 dispute resolution process continues to operate in
8 substantial compliance with subsection (c) of Section 10.

9 (b) (1) Each manufacturer may establish, or otherwise make
10 available to buyers or lessees of new motor vehicles or motor
11 homes, a qualified third-party dispute resolution process for
12 the resolution of disputes pursuant to subsection (b) of
13 Section 10. A manufacturer that itself operates the third-party
14 dispute resolution process shall apply to the Attorney General
15 for certification of that process. If the manufacturer makes
16 the third-party dispute resolution process available to buyers
17 or lessees of new motor vehicles or motor homes through
18 contract or other arrangement with another entity, that entity
19 shall apply to the Attorney General for certification. An
20 entity that operates a third-party dispute resolution process
21 for more than one manufacturer shall make a separate
22 application for certification for each manufacturer that uses
23 that entity's third-party dispute resolution process. The
24 application for certification shall be accompanied by the
25 information prescribed by the Attorney General.

26 (2) The Attorney General shall review the application and

1 accompanying information and, after conducting an onsite
2 inspection, shall determine whether the third-party dispute
3 resolution process is in substantial compliance with
4 subsection (c) of Section 10 and this Section. If the Attorney
5 General determines that the process is in substantial
6 compliance, the Attorney General shall certify the process. If
7 the Attorney General determines that the process is not in
8 substantial compliance, the Attorney General shall deny
9 certification and shall state, in writing, the reasons for
10 denial and the modifications in the operation of the process
11 that are required in order for the process to be certified.

12 (3) The Attorney General shall make a final determination
13 whether to certify a third-party dispute resolution process or
14 to deny certification not later than 90 calendar days following
15 the date the Attorney General accepts the application for
16 certification as complete.

17 (c) (1) The Attorney General, in accordance with the time
18 intervals prescribed pursuant to paragraph (4) of subsection
19 (a), but at least once annually, shall review the operation and
20 performance of each qualified third-party dispute resolution
21 process and determine, using the information provided the
22 Attorney General as prescribed pursuant to paragraph (4) of
23 subsection (a) and the monitoring and inspection information
24 described in paragraph (3) of subsection (d), whether the
25 process is operating in substantial compliance with subsection
26 (c) of Section 10 and this Section. If the Attorney General

1 determines that the process is in substantial compliance, the
2 certification shall remain in effect.

3 (2) If the Attorney General determines that the process is
4 not in substantial compliance with subsection (c) of Section 10
5 or this Section, the Attorney General shall issue a notice of
6 decertification to the entity which operates the process and
7 shall send a copy of that notice to any manufacturer affected
8 by the decertification. The notice of decertification shall
9 state the reasons for the issuance of the notice and prescribe
10 the modifications in the operation of the process that are
11 required in order for the process to retain its certification.

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

24 (d) In addition to any other requirements of this Section,
25 the Attorney General shall do all of the following:

26 (1) Establish procedures to assist owners or lessees of

1 new motor vehicles or motor homes who have complaints
2 regarding the operation of a qualified third-party dispute
3 resolution process.

4 (2) Establish methods for measuring customer
5 satisfaction and to identify violations of this Section,
6 which shall include an annual random postcard or telephone
7 survey by the Attorney General of the customers of each
8 qualified third-party dispute resolution process.

9 (3) Monitor and inspect, on a regular basis, qualified
10 third-party dispute resolution processes to determine
11 whether they continue to meet the standards for
12 certification. Monitoring and inspection shall include,
13 but not be limited to, all of the following:

14 (A) Onsite inspections of each qualified
15 third-party dispute resolution process not less
16 frequently than twice annually.

17 (B) Investigation of complaints from consumers
18 regarding the operation of qualified third-party
19 dispute resolution processes and analyses of
20 representative samples of complaints against each
21 process.

22 (C) Analyses of the annual surveys required by
23 paragraph (2).

24 (5) Submit a biennial report to the General Assembly
25 evaluating the effectiveness of this Section, make
26 available to the public summaries of the statistics and

1 other information supplied by each qualified third-party
2 dispute resolution process, and publish educational
3 materials regarding the purposes of this Section.

4 (6) Adopt rules as necessary and appropriate to
5 implement this Section and subsection (c) of Section 10.

6 (7) Protection of the public shall be the highest
7 priority for the Attorney General in exercising its
8 certification, regulatory, and disciplinary functions.
9 Whenever the protection of the public is inconsistent with
10 other interests sought to be promoted, the protection of
11 the public shall be paramount.

12 (e) The Secretary of State shall, in accordance with the
13 procedures prescribed in this subsection, administer the
14 collection of fees for the purposes of fully funding the
15 administration of this subsection.

16 (1) Fees collected pursuant to this subsection shall be
17 deposited into the Motor Vehicle Dispute Resolution
18 Certification Fund, a special fund created in the State
19 treasury, and shall be available, upon appropriation by the
20 General Assembly, exclusively to pay the expenses incurred
21 by the Attorney General in administering this Section. If,
22 at the conclusion of any fiscal year, the amount of fees
23 collected exceeds the amount of expenditures for that
24 purpose during that fiscal year, the surplus in the Dispute
25 Resolution Certification Fund shall be carried forward
26 into the succeeding fiscal year.

1 (2) Beginning July 1, 2018, and on or before May 1 of
2 each calendar year thereafter, every manufacturer shall
3 file with the Secretary of State a statement of the number
4 of new motor vehicles and motor homes sold, leased, or
5 otherwise distributed by or for the manufacturer in this
6 State during the preceding calendar year, and shall, upon
7 written notice delivered to the manufacturer by certified
8 mail, return receipt requested, pay to the Secretary of
9 State a fee, not to exceed \$1 for each new motor vehicle or
10 motor home sold, leased, or distributed by or for the
11 manufacturer in this State during the preceding calendar
12 year. The total fee paid by each manufacturer shall be
13 rounded to the nearest dollar. Not more than \$1 shall be
14 charged, collected, or received from any one or more
15 manufacturers pursuant to this subsection with respect to
16 the same new motor vehicle or motor home.

17 (3) The fee required by paragraph (2) is due and
18 payable not later than 30 days after the manufacturer has
19 received notice of the amount due and is delinquent after
20 that time. A penalty of 10% of the amount delinquent shall
21 be added to that amount, if the delinquency continues for
22 more than 30 days. If a manufacturer fails to file the
23 statement required by paragraph (2) by the date specified,
24 the Secretary of State shall assess the amount due from the
25 manufacturer by using as the number of new motor vehicles
26 or motor homes sold, leased, or otherwise distributed by or

1 for the manufacturer in this State during the preceding
2 calendar year the total number of new registrations of all
3 new motor vehicles or motor homes sold, leased, or
4 otherwise distributed by or for the manufacturer during the
5 preceding calendar year.

6 (4) On or before February 1 of each year, the Attorney
7 General shall notify the Secretary of State of the dollar
8 amount necessary to fully fund the program established by
9 this Section during the following fiscal year. The
10 Secretary of State shall use this information in
11 calculating the amounts of the fees to be collected from
12 manufacturers pursuant to this subsection.

13 (5) The Secretary of State may adopt rules to implement
14 this subsection. The rules shall include, at a minimum, a
15 formula for calculating the fee, established pursuant to
16 paragraph (2), for each new motor vehicle and motor home
17 and the total amount of fees to be collected from each
18 manufacturer.

19 As used in this subsection, " new motor vehicle" means a
20 new passenger or commercial motor vehicle of a kind that is
21 required to be registered under the Illinois Vehicle Code, but
22 the term does not include a motorcycle, a motor home, or any
23 vehicle whose gross weight exceeds 10,000 pounds.

24 Section 40. Sales and use tax reimbursement.

25 (a) Notwithstanding any applicable provisions imposing a

1 tax amount on manufacturers under the Retailers' Occupation Tax
2 Act, the Use Tax Act, the Service Occupation Tax Act, or the
3 Service Use Tax Act, the Department of Revenue shall reimburse
4 the manufacturer of a new motor vehicle or motor home for an
5 amount equal to the sales tax or use tax which the manufacturer
6 pays to or for the buyer or lessee when providing a replacement
7 vehicle pursuant to paragraph (1) of Section 5 or includes in
8 making restitution to the buyer or lessee pursuant to paragraph
9 (2) of Section 5 when the manufacturer provides satisfactory
10 proof that it has complied with subsection (c) of Section 15,
11 and satisfactory proof is provided for one of the following:

12 (1) The retailer of the new motor vehicle or motor home
13 for which the manufacturer is making restitution has
14 reported and paid the sales tax on the gross receipts from
15 the sale of that motor vehicle.

16 (2) The buyer of the new motor vehicle or motor home
17 has paid the use tax on the sales price for the storage,
18 use, or other consumption of that new motor vehicle or
19 motor home in this State.

20 (3) The lessee of the new motor vehicle or motor home
21 has paid the use tax on the rentals payable from the lease
22 of that new motor vehicle or motor home.

23 (b) The Department of Revenue may adopt rules and
24 regulations to carry out, facilitate compliance with, or
25 prevent circumvention or evasion of this Section.

26 (c) This Section shall not change the application of the

1 sales and use tax to the gross receipts, the rentals payable,
2 and the sales price from the sale, lease, and the storage, use,
3 or other consumption, in this State, of tangible personal
4 property pursuant to the Retailers' Occupation Tax Act, the Use
5 Tax Act, the Service Occupation Tax Act, or the Service Use Tax
6 Act.

7 (d) The manufacturer's claim for reimbursement and the
8 Department of Revenue's approval or denial of the claim shall
9 be subject to the applicable provisions under the Retailers'
10 Occupation Tax Act, the Use Tax Act, the Service Occupation Tax
11 Act, or the Service Use Tax Act concerning claims for a credit
12 or refund of erroneously paid amounts, except provisions
13 relating to accrued interest at the rate and in the manner
14 specified in the Uniform Penalty and Interest Act, insofar as
15 those provisions are not inconsistent with this Section.

16 (e) For purposes of this Section, the amount of use tax
17 that the Department of Revenue is required to reimburse the
18 manufacturer shall be limited to the amount of use tax the
19 manufacturer is required to pay to or for the lessee pursuant
20 to Section 5.

21 Section 45. Prohibitions.

22 (a) Any automobile manufacturer, importer, distributor,
23 dealer, or lienholder who reacquires, or who assists in
24 reacquiring, a new motor vehicle or motor home, whether by
25 judgment, decree, arbitration award, settlement agreement, or

1 voluntary agreement, is prohibited from doing either of the
2 following:

3 (1) Requiring, as a condition of the reacquisition of
4 the new motor vehicle or motor home, that a buyer or lessee
5 who is a resident of this State agree not to disclose the
6 problems with the new motor vehicle or motor home
7 experienced by the buyer or lessee or the nonfinancial
8 terms of the reacquisition.

9 (2) Including, in any release or other agreement,
10 whether prepared by the manufacturer, importer,
11 distributor, dealer, or lienholder, for signature by the
12 buyer or lessee, a confidentiality clause, gag clause, or
13 similar clause prohibiting the buyer or lessee from
14 disclosing information to anyone about the problems with
15 the new motor vehicle or motor home, or the nonfinancial
16 terms of the reacquisition of the new motor vehicle or
17 motor home by the manufacturer, importer, distributor,
18 dealer, or lienholder.

19 (b) Any confidentiality clause, gag clause, or similar
20 clause in such a release or other agreement in violation of
21 this Section shall be null and void as against the public
22 policy of this State.

23 (c) Nothing in this Section is intended to prevent any
24 confidentiality clause, gag clause, or similar clause
25 regarding the financial terms of the reacquisition of the new
26 motor vehicle or motor home.

1 Section 900. The State Finance Act is amended by adding
2 Section 5.878 as follows:

3 (30 ILCS 105/5.878 new)

4 Sec. 5.878. Motor Vehicle Dispute Resolution Certification
5 Fund.

6 Section 905. The Retailers' Occupation Tax Act is amended
7 by changing Section 6 as follows:

8 (35 ILCS 120/6) (from Ch. 120, par. 445)

9 Sec. 6. Credit memorandum or refund. If it appears, after
10 claim therefor filed with the Department, that an amount of tax
11 or penalty or interest has been paid which was not due under
12 this Act, whether as the result of a mistake of fact or an
13 error of law, except as hereinafter provided, then the
14 Department shall issue a credit memorandum or refund to the
15 person who made the erroneous payment or, if that person died
16 or became a person under legal disability, to his or her legal
17 representative, as such. For purposes of this Section, the tax
18 is deemed to be erroneously paid by a retailer when the
19 manufacturer of a new motor vehicle or motor home sold by the
20 retailer accepts the return of that new motor vehicle or motor
21 home automobile and refunds to the purchaser the selling price
22 of that new motor vehicle or motor home as provided in the New

1 Vehicle Buyer Protection Act of 2017. When a new motor vehicle
2 or motor home is returned for a refund of the purchase price
3 under the New Vehicle Buyer Protection Act of 2017, the
4 Department shall issue a credit memorandum or a refund for the
5 amount of tax paid by the retailer under this Act attributable
6 to the initial sale of that new motor vehicle or motor home.
7 Claims submitted by the retailer are subject to the same
8 restrictions and procedures provided for in this Act. If it is
9 determined that the Department should issue a credit memorandum
10 or refund, the Department may first apply the amount thereof
11 against any tax or penalty or interest due or to become due
12 under this Act or under the Use Tax Act, the Service Occupation
13 Tax Act, the Service Use Tax Act, any local occupation or use
14 tax administered by the Department, Section 4 of the Water
15 Commission Act of 1985, subsections (b), (c) and (d) of Section
16 5.01 of the Local Mass Transit District Act, or subsections
17 (e), (f) and (g) of Section 4.03 of the Regional Transportation
18 Authority Act, from the person who made the erroneous payment.
19 If no tax or penalty or interest is due and no proceeding is
20 pending to determine whether such person is indebted to the
21 Department for tax or penalty or interest, the credit
22 memorandum or refund shall be issued to the claimant; or (in
23 the case of a credit memorandum) the credit memorandum may be
24 assigned and set over by the lawful holder thereof, subject to
25 reasonable rules of the Department, to any other person who is
26 subject to this Act, the Use Tax Act, the Service Occupation

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

25 No claim may be allowed for any amount paid to the
26 Department, whether paid voluntarily or involuntarily, if paid

1 in total or partial liquidation of an assessment which had
2 become final before the claim for credit or refund to recover
3 the amount so paid is filed with the Department, or if paid in
4 total or partial liquidation of a judgment or order of court.
5 No credit may be allowed or refund made for any amount paid by
6 or collected from any claimant unless it appears (a) that the
7 claimant bore the burden of such amount and has not been
8 relieved thereof nor reimbursed therefor and has not shifted
9 such burden directly or indirectly through inclusion of such
10 amount in the price of the tangible personal property sold by
11 him or her or in any manner whatsoever; and that no
12 understanding or agreement, written or oral, exists whereby he
13 or she or his or her legal representative may be relieved of
14 the burden of such amount, be reimbursed therefor or may shift
15 the burden thereof; or (b) that he or she or his or her legal
16 representative has repaid unconditionally such amount to his or
17 her vendee (1) who bore the burden thereof and has not shifted
18 such burden directly or indirectly, in any manner whatsoever;
19 (2) who, if he or she has shifted such burden, has repaid
20 unconditionally such amount to his own vendee; and (3) who is
21 not entitled to receive any reimbursement therefor from any
22 other source than from his or her vendor, nor to be relieved of
23 such burden in any manner whatsoever. No credit may be allowed
24 or refund made for any amount paid by or collected from any
25 claimant unless it appears that the claimant has
26 unconditionally repaid, to the purchaser, any amount collected

1 from the purchaser and retained by the claimant with respect to
2 the same transaction under the Use Tax Act.

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

6 In case the Department determines that the claimant is
7 entitled to a refund, such refund shall be made only from such
8 appropriation as may be available for that purpose. If it
9 appears unlikely that the amount appropriated would permit
10 everyone having a claim allowed during the period covered by
11 such appropriation to elect to receive a cash refund, the
12 Department, by rule or regulation, shall provide for the
13 payment of refunds in hardship cases and shall define what
14 types of cases qualify as hardship cases.

15 If a retailer who has failed to pay retailers' occupation
16 tax on gross receipts from retail sales is required by the
17 Department to pay such tax, such retailer, without filing any
18 formal claim with the Department, shall be allowed to take
19 credit against such retailers' occupation tax liability to the
20 extent, if any, to which such retailer has paid an amount
21 equivalent to retailers' occupation tax or has paid use tax in
22 error to his or her vendor or vendors of the same tangible
23 personal property which such retailer bought for resale and did
24 not first use before selling it, and no penalty or interest
25 shall be charged to such retailer on the amount of such credit.
26 However, when such credit is allowed to the retailer by the

1 Department, the vendor is precluded from refunding any of that
2 tax to the retailer and filing a claim for credit or refund
3 with respect thereto with the Department. The provisions of
4 this amendatory Act shall be applied retroactively, regardless
5 of the date of the transaction.

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

7 Section 910. The Illinois Vehicle Code is amended by
8 changing Section 5-104.2 as follows:

9 (625 ILCS 5/5-104.2)

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

11 (a) Every manufacturer shall be prohibited from reselling
12 any new motor vehicle or motor home that has been finally
13 ordered, determined, or adjudicated as having a nonconformity
14 under the New Vehicle Buyer Protection Act, the New Vehicle
15 Buyer Protection Act of 2017, or a similar law of any state,
16 territory, or country, and that the manufacturer repurchased or
17 replaced because of the nonconformity, unless the manufacturer
18 has corrected the nonconformity and issues a disclosure
19 statement prior to resale stating that the new motor vehicle or
20 motor home was repurchased or replaced under the New Vehicle
21 Buyer Protection Act, the New Vehicle Buyer Protection Act of
22 2017, or similar law of any other state, territory, or country;
23 identifying the nonconformity; and warranting that the
24 nonconformity has been corrected. The disclosure statement

1 must accompany the new motor vehicle or motor home through the
2 first retail purchase.

3 (b) "Nonconformity" refers to a new motor vehicle's or
4 motor home's failure to conform to all written ~~express~~
5 warranties applicable to the new motor vehicle or motor home,
6 which failure substantially impairs the use, market value, or
7 safety of the new motor vehicle or motor home.

8 (c) The disclosure statement referred to in subsection (a)
9 shall be in substantially the same form as below:

10 "IMPORTANT

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

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

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

1 (815 ILCS 380/Act rep.)

2 Section 915. The New Vehicle Buyer Protection Act is

3 repealed.".