



Rep. Rich Brauer

Filed: 4/6/2005

09400HB2991ham002

LRB094 05242 RXD 44537 a

1 AMENDMENT TO HOUSE BILL 2991

2 AMENDMENT NO. _____. Amend House Bill 2991 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Motor Vehicle Franchise Act is amended by
5 changing Section 4 as follows:

6 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

7 Sec. 4. Unfair competition and practices.

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

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

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

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

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

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

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

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

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

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

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

1 dealer shall not constitute a violation of this Act;

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

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

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

32 (i) the business operations of the franchisee
33 have been abandoned or the franchisee has failed to
34 conduct customary sales and service operations

1 during customary business hours for at least 7
2 consecutive business days unless such closing is
3 due to an act of God, strike or labor difficulty or
4 other cause over which the franchisee has no
5 control; or

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

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

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

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

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

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

28 (D) Notwithstanding the terms, conditions, or
29 provisions of a franchise or selling agreement, the
30 following shall not constitute good cause for
31 cancelling or terminating or failing to extend or renew
32 the franchise or selling agreement: (i) the change of
33 ownership or executive management of the franchisee's
34 dealership; or (ii) the fact that the franchisee or

1 owner of an interest in the franchise owns, has an
2 investment in, participates in the management of, or
3 holds a license for the sale of the same or any other
4 line make of new motor vehicles.

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

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

20 (7) notwithstanding the terms of any franchise
21 agreement, to fail to indemnify and hold harmless its
22 franchised dealers against any judgment or settlement for
23 damages, including, but not limited to, court costs, expert
24 witness fees, reasonable attorneys' fees of the new motor
25 vehicle dealer, and other expenses incurred in the
26 litigation, so long as such fees and costs are reasonable,
27 arising out of complaints, claims or lawsuits including,
28 but not limited to, strict liability, negligence,
29 misrepresentation, warranty (express or implied), or
30 rescission of the sale as defined in Section 2-608 of the
31 Uniform Commercial Code, to the extent that the judgment or
32 settlement relates to the alleged defective or negligent
33 manufacture, assembly or design of new motor vehicles,
34 parts or accessories or other functions by the

1 manufacturer, beyond the control of the dealer; provided
2 that, in order to provide an adequate defense, the
3 manufacturer receives notice of the filing of a complaint,
4 claim, or lawsuit within 60 days after the filing.

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

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

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

27 (3) to offer to sell or lease, or to sell or lease, any
28 new motor vehicle to any person, except a wholesaler,
29 distributor or manufacturer's employees at a lower actual
30 price therefor than the actual price offered and charged to
31 a motor vehicle dealer for the same model vehicle similarly
32 equipped or to utilize any device which results in such
33 lesser actual price. However, the provisions of this
34 paragraph shall not apply to sales to a motor vehicle

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

3 (4) to prevent or attempt to prevent by contract or
4 otherwise any motor vehicle dealer or franchisee from
5 changing the executive management control of the motor
6 vehicle dealer or franchisee unless the franchiser, having
7 the burden of proof, proves that such change of executive
8 management will result in executive management control by a
9 person or persons who are not of good moral character or
10 who do not meet the franchiser's existing and, with
11 consideration given to the volume of sales and service of
12 the dealership, uniformly applied minimum business
13 experience standards in the market area. However where the
14 manufacturer rejects a proposed change in executive
15 management control, the manufacturer shall give written
16 notice of his reasons to the dealer within 60 days of
17 notice to the manufacturer by the dealer of the proposed
18 change. If the manufacturer does not send a letter to the
19 franchisee by certified mail, return receipt requested,
20 within 60 days from receipt by the manufacturer of the
21 proposed change, then the change of the executive
22 management control of the franchisee shall be deemed
23 accepted as proposed by the franchisee, and the
24 manufacturer shall give immediate effect to such change;

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

1 (6) to refuse to give effect to or prevent or attempt
2 to prevent by contract or otherwise any motor vehicle
3 dealer or any officer, partner or stockholder of any motor
4 vehicle dealer from selling or transferring any part of the
5 interest of any of them to any other person or persons or
6 party or parties unless such sale or transfer is to a
7 transferee who would not otherwise qualify for a new motor
8 vehicle dealers license under "The Illinois Vehicle Code"
9 or unless the franchiser, having the burden of proof,
10 proves that such sale or transfer is to a person or party
11 who is not of good moral character or does not meet the
12 franchiser's existing and reasonable capital standards
13 and, with consideration given to the volume of sales and
14 service of the dealership, uniformly applied minimum
15 business experience standards in the market area. However,
16 nothing herein shall be construed to prevent a franchiser
17 from implementing affirmative action programs providing
18 business opportunities for minorities or from complying
19 with applicable federal, State or local law:

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

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

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

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

27 (B) Good cause to refuse to approve such sale or
28 transfer under this Section is established when such
29 sale or transfer is to a transferee who would not
30 otherwise qualify for a new motor vehicle dealers
31 license under "The Illinois Vehicle Code" or such sale
32 or transfer is to a person or party who is not of good
33 moral character or does not meet the franchiser's
34 existing and reasonable capital standards and, with

1 consideration given to the volume of sales and service
2 of the dealership, uniformly applied minimum business
3 experience standards in the market area.

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

11 (8) to grant an additional franchise in the relevant
12 market area of an existing franchise of the same line make
13 or to relocate an existing motor vehicle dealership within
14 or into a relevant market area of an existing franchise of
15 the same line make. However, if the manufacturer wishes to
16 grant such an additional franchise to an independent person
17 in a bona fide relationship in which such person is
18 prepared to make a significant investment subject to loss
19 in such a dealership, or if the manufacturer wishes to
20 relocate an existing motor vehicle dealership, then the
21 manufacturer shall send a letter by certified mail, return
22 receipt requested, to each existing dealer or dealers of
23 the same line make whose relevant market area includes the
24 proposed location of the additional or relocated franchise
25 at least 60 days before the manufacturer grants an
26 additional franchise or relocates an existing franchise of
27 the same line make within or into the relevant market area
28 of an existing franchisee of the same line make. Each
29 notice shall set forth the specific grounds for the
30 proposed grant of an additional or relocation of an
31 existing franchise. Unless the parties agree upon the grant
32 or establishment of the additional or relocated franchise
33 within 30 days from the date the notice was received by the
34 existing franchisee of the same line make or any person

1 entitled to receive such notice, the franchisee or other
2 person may file with the Board a written protest against
3 the grant or establishment of the proposed additional or
4 relocated franchise and shall state that the dealer only
5 has 30 days from the receipt of the notice to file with the
6 Motor Vehicle Review Board a written protest against the
7 proposed action.

8 When a protest has been timely filed, the Board shall
9 enter an order fixing a date (within 60 days of the date of
10 the order), time, and place of a hearing on the protest,
11 required under Sections 12 and 29 of this Act, and send by
12 certified or registered mail, return receipt requested, a
13 copy of the order to the manufacturer that filed the notice
14 of intention to grant or establish the proposed additional
15 or relocated franchise and to the protesting dealer or
16 dealers of the same line make whose relevant market area
17 includes the proposed location of the additional or
18 relocated franchise.

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

33 The determination whether good cause exists for
34 allowing the grant or establishment of an additional

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

13 A. (Blank).

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

26 C. This Section does not apply to the relocation of
27 an existing dealership or franchise in a county having
28 a population of more than 300,000 persons when the new
29 location is within the dealer's current relevant
30 market area, provided the new location is more than 7
31 miles from the nearest dealer of the same line make.
32 This Section does not apply to the relocation of an
33 existing dealership or franchise in a county having a
34 population of less than 300,000 persons when the new

1 location is within the dealer's current relevant
2 market area, provided the new location is more than 12
3 miles from the nearest dealer of the same line make.
4 This Section does not apply to the relocation of an
5 existing dealership or franchise in any county having a
6 population of less than 35,000 persons when the new
7 location is moving less than 3 miles of the relocating
8 dealer's or franchisee's existing location. A dealer
9 that would be farther away from the new location of an
10 existing dealership or franchise of the same line make
11 after a relocation may not file a written protest
12 against the relocation with the Motor Vehicle Review
13 Board.

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

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

23 (10) to prevent or refuse to give effect to the
24 succession to the ownership or management control of a
25 dealership by any legatee under the will of a dealer or to
26 an heir under the laws of descent and distribution of this
27 State unless the franchisee has designated a successor to
28 the ownership or management control under the succession
29 provisions of the franchise. Unless the franchiser, having
30 the burden of proof, proves that the successor is a person
31 who is not of good moral character or does not meet the
32 franchiser's existing and reasonable capital standards
33 and, with consideration given to the volume of sales and
34 service of the dealership, uniformly applied minimum

1 business experience standards in the market area, any
2 designated successor of a dealer or franchisee may succeed
3 to the ownership or management control of a dealership
4 under the existing franchise if:

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

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

13 Notwithstanding the foregoing, in the event the motor
14 vehicle dealer or franchisee and manufacturer have duly
15 executed an agreement concerning succession rights prior
16 to the dealer's death or incapacitation, the agreement
17 shall be observed.

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

33 If notice of refusal is not timely served upon the
34 designated successor, the franchise agreement shall

1 continue in effect subject to termination only as
2 otherwise permitted by paragraph (6) of subsection (d)
3 of Section 4 of this Act.

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

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

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

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

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

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

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

1 a population of less than 300,000 persons; or

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

11 (f) It is deemed a violation for a manufacturer, a
12 distributor, a wholesale, a distributor branch or division, a
13 factory branch or division, or a wholesale branch or division,
14 or officer, agent, broker, shareholder, except a shareholder of
15 1% or less of the outstanding shares of any class of securities
16 of a manufacturer, distributor, or wholesaler which is a
17 publicly traded corporation, or other representative, directly
18 or indirectly, to own or operate a place of business as a motor
19 vehicle franchisee or motor vehicle financing affiliate,
20 except that, this subsection shall not prohibit the ownership
21 or operation of a place of business by a manufacturer,
22 distributor, or wholesaler for a period, not to exceed 18
23 months, during the transition from one motor vehicle franchisee
24 to another; or the investment in a motor vehicle franchisee by
25 a manufacturer, distributor, or wholesaler if the investment is
26 for the sole purpose of enabling a partner or shareholder in
27 that motor vehicle franchisee to acquire an interest in that
28 motor vehicle franchisee and that partner or shareholder is not
29 otherwise employed by or associated with the manufacturer,
30 distributor, or wholesaler and would not otherwise have the
31 requisite capital investment funds to invest in the motor
32 vehicle franchisee, and has the right to purchase the entire
33 equity interest of the manufacturer, distributor, or
34 wholesaler in the motor vehicle franchisee within a reasonable

1 period of time not to exceed 5 years.

2 (Source: P.A. 90-655, eff. 7-30-98; 91-415, eff. 1-1-00;

3 91-485, eff. 1-1-00; 91-701, eff. 5-12-00.)".