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 Section 4 as follows:

(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.

(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;

(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
recission 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;

(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
ty person.
(f) It is deemed a violation for a manufacturer, a
distributor, a wholesaler wholesaler, 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:
(1) 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
(2) 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; or-
(3) the ownership or operation of a place of business
by a manufacturer that manufactures only diesel engines for
installation in trucks having a gross vehicle weight rating
of more than 16,000 pounds that are required to be
registered under the Illinois Vehicle Code, provided that:
(A) the manufacturer does not otherwise
manufacture, distribute, or sell motor vehicles as
defined under Section 1-217 of the Illinois Vehicle
Code;
(B) the manufacturer owned a place of business and
it was in operation as of January 1, 2016;

(C) the manufacturer complies with all obligations owed to dealers that are not owned, operated, or controlled by the manufacturer, including, but not limited to those obligations arising pursuant to Section 6;

(D) to further avoid any acts or practices, the effect of which may be to lessen or eliminate competition, the manufacturer provides to dealers on substantially equal terms access to all support for completing repairs, including, but not limited to, parts and assemblies, training, and technical service bulletins, and other information concerning repairs that the manufacturer provides to facilities that are owned, operated, or controlled by the manufacturer; and

(E) the manufacturer does not require that warranty repair work be performed by a manufacturer-owned repair facility and the manufacturer provides any dealer that has an agreement with the manufacturer to sell and perform warranty repairs on the manufacturer's engines the opportunity to perform warranty repairs on those engines, regardless of whether the dealer sold the truck into which the engine was installed.

(g) Notwithstanding the terms, provisions, or conditions
of any agreement or waiver, 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 directly or indirectly condition
the awarding of a franchise to a prospective new motor vehicle
dealer, the addition of a line make or franchise to an existing
dealer, the renewal of a franchise of an existing dealer, the
approval of the relocation of an existing dealer's facility, or
the approval of the sale or transfer of the ownership of a
franchise on the willingness of a dealer, proposed new dealer,
or owner of an interest in the dealership facility to enter
into a site control agreement or exclusive use agreement unless
separate and reasonable consideration was offered and accepted
for that agreement.

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

If a manufacturer exercises any right of first refusal to purchase or lease or option to purchase or lease with regard to a transfer, sale, or lease of the dealership premises to a person who is not an immediate family member of the dealer, then (1) within 60 days from the 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, the manufacturer must notify the dealer of its intent to exercise the right of first refusal to purchase or lease or option to purchase or lease and (2) the exercise of the right of first refusal to purchase or lease or option to purchase or lease must result in the dealer receiving consideration, terms, and conditions that either are the same as or greater than that which they have contracted to receive in connection with the proposed transfer, sale, or lease of the dealership premises.

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

(h) For purposes of this subsection:

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

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

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

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

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

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

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

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

For a period of 3 years from: (i) the date that a successor manufacturer acquires, succeeds to, or assumes any part of the business of a predecessor manufacturer; (ii) the last day that a former franchisee is authorized to remain in business as a franchised dealer with respect to a particular franchise under a termination agreement or deferred termination agreement with a predecessor or successor manufacturer; (iii) the last day that a former franchisee that was cancelled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended by a predecessor or successor manufacturer is authorized to remain in business as a franchised dealer with respect to a particular franchise; or (iv) the effective date of this amendatory Act of the 96th General Assembly, whichever is latest, it shall be unlawful for such successor manufacturer to enter into a same line make franchise with any person or to permit the relocation of any existing same line make franchise, for a line make of the predecessor manufacturer that would be located or relocated within the relevant market area of a former franchisee who owned or leased a dealership facility in
that relevant market area without first offering the additional or relocated franchise to the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or a person with a disability, at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer's other franchisees at that time, unless one of the following applies:

(1) As a result of the former franchisee's cancellation, termination, noncontinuance, or nonrenewal of the franchise, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then-existing dealership facility located within that relevant market area.

(2) The successor manufacturer has paid the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or a person with a disability, the fair market value of the former franchisee's franchise on (i) the date the franchisor announces the action which results in the termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due within 90 days
of the effective date of the termination, cancellation, or nonrenewal. If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.

(3) The successor manufacturer proves that it would have had good cause to terminate the franchise agreement of the former franchisee, or the successor of the former franchisee under item (e)(10) in the event that the former franchisee is deceased or a person with a disability. The determination of whether the successor manufacturer would have had good cause to terminate the franchise agreement of the former franchisee, or the successor of the former franchisee, shall be made by the Board under subsection (d) of Section 12. A successor manufacturer that seeks to assert that it would have had good cause to terminate a former franchisee, or the successor of the former franchisee, must file a petition seeking a hearing on this issue before the Board and shall have the burden of proving that it would have had good cause to terminate the former franchisee or the successor of the former franchisee. No successor dealer, other than the former franchisee, may be appointed or franchised by the successor manufacturer within the relevant market area of the former franchisee.
until the Board has held a hearing and rendered a
determination on the issue of whether the successor
manufacturer would have had good cause to terminate the
former franchisee.

In the event that a successor manufacturer attempts to
enter into a same line make franchise with any person or to
permit the relocation of any existing line make franchise under
this subsection (h) at a location that is within the relevant
market area of 2 or more former franchisees, then the successor
manufacturer may not offer it to any person other than one of
those former franchisees unless the successor manufacturer can
prove that at least one of the 3 exceptions in items (1), (2),
and (3) of this subsection (h) applies to each of those former
franchisees.

(Source: P.A. 99-143, eff. 7-27-15.)

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