

1 AN ACT concerning business transactions.

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

4 Section 5. The Motor Vehicle Franchise Act is amended by
5 changing Sections 12, 13, 18, and 29 as follows:

6 (815 ILCS 710/12) (from Ch. 121 1/2, par. 762)

7 Sec. 12. Arbitration; administrative proceedings; civil
8 actions; determining good cause.

9 (a) The franchiser and franchisee may agree to submit a
10 dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11
11 ~~cancellation, modification, termination, or refusal to extend~~
12 ~~or renew an existing franchise or selling agreement, or~~
13 ~~refusal to honor succession to ownership or refusal to allow~~
14 ~~a sale or transfer, or the granting of an additional~~
15 ~~franchise of the same line or the relocating of an~~
16 ~~existing motor vehicle dealership within or into a relevant~~
17 ~~market area where the same line make is then represented, or~~
18 ~~the proposed arrangement to establish any additional motor~~
19 ~~vehicle dealership or other facility limited to the sale of~~
20 ~~factory repurchase vehicles or late model vehicles,~~ to
21 arbitration. Any such proceeding shall be conducted under the
22 provisions of the Uniform Arbitration Act by a 3 member panel
23 composed of one member appointed by the franchisee and one
24 member appointed by the franchiser who together shall choose
25 the third member.

26 An arbitration proceeding hereunder shall be commenced by
27 written notice to the franchiser by the objecting franchisee
28 within 30 days from the date the dealer received notice to
29 cancel, terminate, modify or not extend or renew an existing
30 franchise or selling agreement or refusal to honor succession
31 to ownership or refusal to honor a sale or transfer or to

1 grant or enter into the additional franchise or selling
 2 agreement, or to relocate an existing motor vehicle dealer;
 3 or within 60 days of the date the franchisee received notice
 4 in writing by the franchiser of its determination under any
 5 provision of this Act other than the aforesaid Sections, or
 6 as otherwise prescribed by Section 14 of this Act.

7 The franchiser and the franchisee shall appoint their
 8 respective arbitrators and they shall select the third
 9 arbitrator within 14 days of receipt of such notice by the
 10 franchiser. The arbitrators shall commence hearings within
 11 60 days after all the arbitrators have been appointed and a
 12 decision shall be rendered within 30 days after completion of
 13 the hearing.

14 During the pendency of the arbitration, any party may
 15 apply to a court of competent jurisdiction which shall have
 16 power to modify or stay the effective date of a proposed
 17 additional franchise or selling agreement, or the effective
 18 date of a proposed motor vehicle dealership relocation or the
 19 effective date of a cancellation, termination or modification
 20 or refusal to honor succession or refusal to allow a sale or
 21 transfer or extend the expiration date of a franchise or
 22 selling agreement pending a final determination of the issues
 23 raised in the arbitration hearing upon such terms as the
 24 court may determine. Any such modification or stay shall not
 25 be effective for more than 60 days unless extended by the
 26 court for good cause or unless the arbitration hearing is
 27 then in progress.

28 (b) If the franchiser and the franchisee have not agreed
 29 to submit a dispute, involving Section 4, 5, 6, 7, 9, 10.1,
 30 or 11 ~~cancellation, modification, termination, or refusal--to~~
 31 ~~extend-or-renew-an-existing-franchise-or-selling-agreement-or~~
 32 ~~refusal--to-honor-succession-to-ownership-or-refusal-to-allow~~
 33 ~~a-sale-or-transfer-or-the-granting-of-an-additional-franchise~~
 34 ~~of-the-same-line-make-or-the-relocating-of-an-existing--motor~~

1 ~~vehicle--dealership, or the proposed arrangement to establish~~
2 ~~any additional motor vehicle--dealership--or--other--facility~~
3 ~~limited--to--the--sale--of--factory--repurchase--vehicles--or--late~~
4 ~~model--vehicles,~~ to arbitration under (a), a proceeding for a
5 remedy other than damages shall be commenced upon receipt of
6 a timely notice of protest under paragraph (6) of subsection
7 (d) or paragraph (6), (8), or (10) of subsection (e) of
8 Section 4 of this Act or within 60 days of the date the
9 franchisee received notice in writing by the franchiser of
10 its determination under any provision of this Act other than
11 the aforesaid Sections, or as otherwise prescribed by
12 Section 14 of this Act, before the Motor Vehicle Review Board
13 as prescribed by Sections 12 and 29 of this Act.

14 During the pendency of a proceeding under this Section, a
15 party may apply to a court of competent jurisdiction that
16 shall have power to modify or stay the effective date of a
17 proposed additional franchise or selling agreement, or the
18 effective date of a proposed motor vehicle dealership
19 relocation, or the effective date of a cancellation,
20 termination, or modification, or extend the expiration date
21 of a franchise or selling agreement or refusal to honor
22 succession to ownership or refusal to approve a sale or
23 transfer pending a final determination of the issues raised
24 in the hearing upon such terms as the court may determine.
25 Any modification or stay shall not be effective for more than
26 60 days unless extended by the court for good cause or unless
27 the hearing is then in progress.

28 (c) In proceedings under (a) or (b), when determining
29 whether good cause has been established for granting such
30 proposed additional franchise or selling agreement, or for
31 relocating an existing motor vehicle dealership, the
32 arbitrators or Board shall consider all relevant
33 circumstances in accordance with subsection (v) of Section 2
34 of this Act, including but not limited to:

1 (1) whether the establishment of such additional
2 franchise or the relocation of such motor vehicle
3 dealership is warranted by economic and marketing
4 conditions including anticipated future changes;

5 (2) the retail sales and service business
6 transacted by the objecting motor vehicle dealer or
7 dealers and other motor vehicle dealers of the same line
8 make with a place of business in the relevant market area
9 to be served by the additional franchise or the relocated
10 motor vehicle dealership during the 5 year period
11 immediately preceding such notice as compared to the
12 business available to them;

13 (3) the investment necessarily made and obligations
14 incurred by the objecting motor vehicle dealer or dealers
15 and other motor vehicle dealers of the same line make
16 with a place of business in the relevant market area to
17 be served by the additional franchise or the relocated
18 motor vehicle dealership to perform their obligations
19 under existing franchises or selling agreements; and, the
20 manufacturer shall give reasonable credit for sales of
21 factory repurchase vehicles purchased by the objecting
22 motor vehicle dealer or dealers and other motor vehicle
23 dealers of the same line make with the place of business
24 in the relevant market area to be served by the
25 additional franchise or the relocated motor vehicle
26 dealership, or the additional motor vehicle dealership or
27 other facility limited to the sale of factory repurchase
28 or late model vehicles, at manufacturer authorized or
29 sponsored auctions in determining performance of
30 obligations under existing franchises or selling
31 agreements relating to total new vehicle sales;

32 (4) the permanency of the investment of the
33 objecting motor vehicle dealer or dealers and other motor
34 vehicle dealers of the same line make with a place of

1 business in the relevant market area to be served by the
2 additional franchise or the relocated motor vehicle
3 dealership;

4 (5) whether it is beneficial or injurious to the
5 public welfare for an additional franchise or relocated
6 motor vehicle dealership to be established;

7 (6) whether the objecting motor vehicle dealer or
8 dealers and other motor vehicle dealers of the same line
9 make with a place of business in the relevant market area
10 to be served by the additional franchisee or relocated
11 motor vehicle dealership are providing adequate
12 competition and convenient consumer care for the motor
13 vehicles of the same line make owned or operated in the
14 area to be served by the additional franchise or
15 relocated motor vehicle dealership;

16 (7) whether the objecting motor vehicle dealer or
17 dealers and other motor vehicle dealers of the same line
18 make with a place of business in the relevant market area
19 to be served by the additional franchisee or the
20 relocated motor vehicle dealership have adequate motor
21 vehicle sales and service facilities, equipment, vehicle
22 parts and qualified personnel to reasonably provide for
23 the needs of the customer; provided, however, that good
24 cause shall not be shown solely by a desire for further
25 market penetration;

26 (8) whether the establishment of an additional
27 franchise or the relocation of a motor vehicle dealership
28 would be in the public interest;

29 (9) whether there has been a material breach by a
30 motor vehicle dealer of the existing franchise agreement
31 which creates a substantially detrimental effect upon the
32 distribution of the franchiser's motor vehicles in the
33 affected motor vehicle dealer's relevant market area or
34 fraudulent claims for warranty work, insolvency or

1 inability to pay debts as they mature;

2 (10) the effect of an additional franchise or
3 relocated motor vehicle dealership upon the existing
4 motor vehicle dealers of the same line make in the
5 relevant market area to be served by the additional
6 franchisee or relocated motor vehicle dealership; and

7 (11) whether the manufacturer has given reasonable
8 credit to the objecting motor vehicle dealer or dealers
9 and other motor vehicle dealers of the same line make
10 with a place of business in the relevant market area to
11 be served by the additional franchise or relocated motor
12 vehicle dealership or additional motor vehicle dealership
13 or other facility limited to the sale of factory
14 repurchase or late model vehicles, for retail sales of
15 factory repurchase vehicles purchased by the motor
16 vehicle dealer or dealers at manufacturer authorized or
17 sponsored auctions.

18 (d) In proceedings under subsection (a) or (b), when
19 determining whether good cause has been established for
20 cancelling, terminating, refusing to extend or renew, or
21 changing or modifying the obligations of the motor vehicle
22 dealer as a condition to offering a renewal, replacement, or
23 succeeding franchise or selling agreement, the arbitrators or
24 Board shall consider all relevant circumstances in accordance
25 with subsection (v) of Section 2 of this Act, including but
26 not limited to:

27 (1) The amount of retail sales transacted by the
28 franchisee during a 5-year period immediately before the
29 date of the notice of proposed action as compared to the
30 business available to the franchisee.

31 (2) The investment necessarily made and obligations
32 incurred by the franchisee to perform its part of the
33 franchise.

34 (3) The permanency of the franchisee's investment.

1 (4) Whether it is injurious to the public interest
2 for the franchise to be cancelled or terminated or not
3 extended or modified, or the business of the franchise
4 disrupted.

5 (5) Whether the franchisee has adequate motor
6 vehicle sales and service facilities, equipment, vehicle
7 parts, and service personnel to reasonably provide for
8 the need of the customers for the same line make of motor
9 vehicles handled by the franchisee.

10 (6) Whether the franchisee fails to fulfill the
11 warranty obligations of the manufacturer required to be
12 performed by the franchisee.

13 (7) The extent and materiality of the franchisee's
14 failure to comply with the terms of the franchise and the
15 reasonableness and fairness of those terms.

16 (8) Whether the owners of the franchise had actual
17 knowledge of the facts and circumstances upon which
18 cancellation or termination, failure to extend or renew,
19 or changing or modification of the obligations of the
20 franchisee as a condition to offering a renewal,
21 replacement, or succeeding franchise or selling
22 agreement.

23 (e) If the franchiser and the franchisee have not agreed
24 to submit a dispute to arbitration, and the dispute did not
25 arise under paragraph (6) of subsection (d) or paragraph (6),
26 (8), or (10) of subsection (e) of Section 4 of this Act, then
27 a proceeding for a remedy other than damages may ~~shall~~ be
28 commenced by the objecting franchisee in the circuit court of
29 the county in which the objecting franchisee has its
30 principal place of business, within 60 days of the date the
31 franchisee received notice in writing by the franchiser of
32 its determination under any provision of this Act other than
33 the aforesaid Sections, or as otherwise prescribed by Section
34 14 ~~13~~ of this Act.

1 (f) The changes to this Section made by this amendatory
2 Act of the 92nd General Assembly (i) apply only to causes of
3 action accruing on or after its effective date and (ii) are
4 intended to provide only an additional venue for dispute
5 resolution without changing any substantive rights under this
6 Act.

7 (Source: P.A. 89-145, eff. 7-14-95.)

8 (815 ILCS 710/13) (from Ch. 121 1/2, par. 763)

9 Sec. 13. Damages; equitable relief. Any franchisee or
10 motor vehicle dealer who suffers any loss of money or
11 property, real or personal, as a result of the use or
12 employment by a manufacturer, wholesaler, distributor,
13 distributor branch or division, factory branch or division,
14 wholesale branch or division, or any agent, servant or
15 employee thereof, of an unfair method of competition or an
16 unfair or deceptive act or practice declared unlawful by this
17 Act, or any action in violation of this Act, may bring an
18 action for damages and equitable relief, including injunctive
19 relief before the Motor Vehicle Review Board, in Circuit
20 Court, or, if applicable, in arbitration. Where the
21 misconduct is willful or wanton, the court may award treble
22 damages. A motor vehicle dealer, if it has not suffered any
23 loss of money or property, may obtain permanent equitable
24 relief if it can be shown that the unfair act or practice may
25 have the effect of causing such loss of money or property.
26 Where the franchisee or dealer substantially prevails the
27 court or arbitration panel or Motor Vehicle Review Board
28 shall award attorney's fees and assess costs, including
29 expert witness fees and other expenses incurred by the dealer
30 in the litigation, so long as such fees and costs are
31 reasonable, against the opposing party. Moreover, for the
32 purposes of the award of attorney's fees, expert witness
33 fees, and costs whenever the franchisee or dealer is seeking

1 injunctive or other relief, the franchisee or dealer may be
 2 considered to have prevailed when a judgment is entered in
 3 its favor, when a final administrative decision is entered in
 4 its favor and affirmed, if subject to judicial review, when a
 5 consent order is entered into, or when the manufacturer,
 6 distributor, wholesaler, distributor branch or division,
 7 factory branch or division, wholesale branch or division, or
 8 any officer, agent or other representative thereof ceases the
 9 conduct, act or practice which is alleged to be in violation
 10 of any Section of this Act.

11 The changes to this Section made by this amendatory Act
 12 of the 92nd General Assembly (i) apply only to causes of
 13 action accruing on or after its effective date and (ii) are
 14 intended to provide only an additional venue for dispute
 15 resolution without changing any substantive rights under this
 16 Act.

17 (Source: P.A. 91-485, eff. 1-1-00; 91-533, eff. 8-13-99.)

18 (815 ILCS 710/18)

19 Sec. 18. Board; powers. The Board shall have the
 20 following powers:

21 (a) To conduct hearings, by or through its duly
 22 authorized administrative hearing officer, on protests filed
 23 under Sections 4, 5, 6, 7, 9, 10.1, 11, and 12 of this Act.

24 (b) To make reasonable regulations that are necessary to
 25 carry out and effect its official duties and such further
 26 rules as necessary relating to the time, place, and manner of
 27 conducting hearings as provided for in this Act.

28 (c) To advise the Secretary of State upon appointments.

29 (d) To advise the Secretary of State on legislation
 30 proposed to amend this Act or any related Act.

31 The changes to this Section made by this amendatory Act
 32 of the 92nd General Assembly (i) apply only to causes of
 33 action accruing on or after its effective date and (ii) are

1 intended to provide only an additional venue for dispute
2 resolution without changing any substantive rights under this
3 Act.

4 (Source: P.A. 89-145, eff. 7-14-95; 89-433, eff. 12-15-95.)

5 (815 ILCS 710/29)

6 Sec. 29. Procedures for hearing on protest. Upon
7 receipt of a timely notice of protest under ~~paragraph-(6)-of~~
8 ~~subsection-(d)-of-paragraph-(6),-(8),-or-(10)--of--subsection~~
9 ~~(e)--of~~ Section 4, 5, 6, 7, 9, 10.1, 11, or and ~~Section~~ 12 of
10 this Act, the Motor Vehicle Review Board shall enter an order
11 fixing a date (within 60 days of the date of the order),
12 time, the place of a hearing and send by certified mail,
13 return receipt requested, a copy of the order to the
14 manufacturer and the objecting dealer or dealers. Subject to
15 Section 10-20 of the Illinois Administrative Procedure Act,
16 the Board shall designate a hearing officer who shall conduct
17 the hearing. All administrative hearing officers shall be
18 attorneys licensed to practice law in this State.

19 At the time and place fixed in the Board's order, the
20 Board or its duly authorized agent, the hearing officer,
21 shall proceed to hear the protest, and all parties to the
22 protest shall be afforded an opportunity to present in person
23 or by counsel, statements, testimony, evidence, and argument
24 as may be pertinent to the issues. The hearing officer may
25 continue the hearing date by agreement of the parties, or
26 upon a finding of good cause, but in no event shall the
27 hearing be rescheduled more than 90 days after the Board's
28 initial order.

29 Upon any hearing, the Board or its duly authorized agent,
30 the hearing officer, may administer oaths to witnesses and
31 issue subpoenas for the attendance of witnesses or other
32 persons and the production of relevant documents, records,
33 and other evidence and may require examination thereon. For

1 purposes of discovery, the Board or its designated hearing
2 officer may, if deemed appropriate and proper under the
3 circumstances, authorize the parties to engage in such
4 discovery procedures as are provided for in civil actions in
5 Section 2-1003 of the Code of Civil Procedure. Discovery
6 shall be completed no later than 15 days prior to
7 commencement of the proceeding or hearing. Enforcement of
8 discovery procedures shall be as provided in the regulations.
9 Subpoenas issued shall be served in the same manner as
10 subpoenas issued out of the circuit courts. The fees of
11 subpoenaed witnesses under this Act for attendance and travel
12 shall be the same as fees of witnesses before the circuit
13 courts of this State, such fees to be paid when the witness
14 is excused from further attendance, provided the witness is
15 subpoenaed at the instance of the Board or an agent
16 authorized by the Board; and payment of fees shall be made
17 and audited in the same manner as other expenses of the
18 Board. Whenever a subpoena is issued at the request of a
19 party to a proceeding, complainant, or respondent, as the
20 case may be, the Board may require that the cost of service
21 of the subpoena and the fee of same shall be borne by the
22 party at whose instance the witness is summoned, and the
23 Board shall have power, in its discretion, to require a
24 deposit to cover the cost of service and witness fees and the
25 payment of the legal witness fee and mileage to the witness
26 served with the subpoena. In any protest before the Board,
27 the Board or its designated hearing officer may order a
28 mandatory settlement conference. The failure of a party to
29 appear, to be prepared, or to have authority to settle the
30 matter may result in any or all of the following:

31 (a) The Board or its designated hearing officer may
32 suspend all proceedings before the Board in the matter until
33 compliance.

34 (b) The Board or its designated hearing officer may

1 dismiss the proceedings or any part thereof before the Board
2 with or without prejudice.

3 (c) The Board or its designated hearing officer may
4 require all of the Board's costs to be paid by the party at
5 fault.

6 Any circuit court of this State, upon application of the
7 Board, or an officer or agent designated by the Board for the
8 purpose of conducting any hearing, may, in its discretion,
9 compel the attendance of witnesses, the production of books,
10 papers, accounts, or documents, and giving of testimony
11 before the Board or before any officer or agent designated
12 for the purpose of conducting the hearing. Failure to obey
13 the order may be punished by the circuit court as contempt.

14 A party may conduct cross-examination required for a full
15 and fair disclosure of the facts. Within 20 days of the date
16 of the hearing, the hearing officer shall issue his or her
17 proposed decision to the Board and shall, by certified mail,
18 return receipt requested, serve the proposed decision upon
19 the parties, with an opportunity afforded to each party to
20 file exceptions and present a brief to the Board within 10
21 days of their receipt of the proposed decision. The proposed
22 decision shall contain a statement of the reasons for the
23 decision and each issue of fact or law necessary to the
24 proposed decision. The Board shall then issue its final
25 order which, if applicable, shall include the award of
26 attorney's fees, expert witness fees, and an assessment of
27 costs, including other expenses incurred in the litigation,
28 if permitted under this Act, so long as such fees and costs
29 are reasonable.

30 In a hearing on a protest filed under paragraph (6) of
31 subsection (d) or paragraph (6), (8), or (10) of Section 4 or
32 Section 12 of this Act, the manufacturer shall have the
33 burden of proof to establish that there is good cause for the
34 franchiser to: grant or establish an additional franchise or

1 relocate an existing franchise; cancel, terminate, refuse to
2 extend or renew a franchise or selling agreement; or change
3 or modify the obligations of the motor vehicle dealer as a
4 condition to offering a renewal, replacement, or succeeding
5 franchise or selling agreement or refuse to honor succession
6 to ownership or refuse to approve a proposed transfer or
7 sale. The determination whether good cause exists shall be
8 made under Section 12 of this Act.

9 The Board shall record the testimony and preserve a
10 record of all proceedings at the hearing by proper means of
11 recordation. The notice required to be given by the
12 manufacturer and notice of protest by the dealer or other
13 party, the notice of hearing, and all other documents in the
14 nature of pleadings, motions, and rulings, all evidence,
15 offers of proof, objections, and rulings thereon, the
16 transcript of testimony, the report of findings or proposed
17 decision of the hearing officer, and the orders of the Board
18 shall constitute the record of the proceedings. The Board
19 shall furnish a transcript of the record to any person
20 interested in the hearing upon payment of the actual cost
21 thereof.

22 The changes to this Section made by this amendatory Act
23 of the 92nd General Assembly (i) apply only to causes of
24 action accruing on or after its effective date and (ii) are
25 intended to provide only an additional venue for dispute
26 resolution without changing any substantive rights under this
27 Act.

28 (Source: P.A. 91-485, eff. 1-1-00.)