



Rep. Jay Hoffman

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LRB104 08164 SPS 36237 a

1 AMENDMENT TO HOUSE BILL 2432

2 AMENDMENT NO. _____. Amend House Bill 2432 on page 1,
3 immediately after line 18, by inserting the following:

4 "Section 10. The Motor Vehicle Franchise Act is amended by
5 changing Sections 2, 4, and 6 as follows:

6 (815 ILCS 710/2) (from Ch. 121 1/2, par. 752)

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

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

1 registered under the Illinois Vehicle Code.

2 (b) "Manufacturer", any person engaged in the business of
3 manufacturing or assembling new and unused motor vehicles.
4 "Manufacturer" includes a factory branch, distributor, and
5 distributor branch.

6 (c) "Factory branch", a branch office maintained by a
7 manufacturer which manufactures or assembles motor vehicles
8 for sale to distributors or motor vehicle dealers or which is
9 maintained for directing and supervising the representatives
10 of the manufacturer.

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

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

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

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

25 (h) "Motor vehicle dealer", any person who, in the
26 ordinary course of business, is engaged in the business of

1 selling new or used motor vehicles to consumers or other end
2 users.

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

10 (j) "Franchiser", a manufacturer, distributor or
11 wholesaler who grants a franchise to a motor vehicle dealer.

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

14 (l) "Sale", shall include the issuance, transfer,
15 agreement for transfer, exchange, pledge, hypothecation,
16 mortgage in any form, whether by transfer in trust or
17 otherwise, of any motor vehicle or interest therein or of any
18 franchise related thereto; and any option, subscription or
19 other contract or solicitation, looking to a sale, or offer or
20 attempt to sell in any form, whether oral or written. A gift or
21 delivery of any motor vehicle or franchise with respect
22 thereto with or as a bonus on account of the sale of anything
23 shall be deemed a sale of such motor vehicle or franchise. The
24 acceptance of a deposit or receiving payment for the retail or
25 wholesale purchase, lease, or other use of a motor vehicle;
26 the acceptance of a reservation from a retail consumer for the

1 retail purchase, lease, or other use of a specific motor
2 vehicle identified by a vehicle identification number or other
3 product identifier; the setting of a retail price for the
4 purchase, lease, or other use of a motor vehicle; and the
5 offering or negotiating of terms with a retail consumer for
6 the purchase, lease, or other use of a motor vehicle shall be
7 deemed a sale of the motor vehicle. "Sale" does not include
8 facilitating a motor vehicle dealer's acceptance of a deposit
9 or receipt of a payment from a consumer or receiving payment
10 under a retail installment contract; setting a manufacturer's
11 suggested retail price; and the use of a website or other means
12 of electronic communication that identifies to a consumer a
13 conditional trade-in value and that contains language
14 informing the consumer that the trade-in value is not binding
15 on any motor vehicle dealer.

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

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

1 activities of each such entity.

2 (o) "New motor vehicle", a motor vehicle which has not
3 been previously sold to any person except a distributor or
4 wholesaler or motor vehicle dealer for resale.

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

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

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

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

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

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

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

8 (w) "Common entity" means any person that:

9 (1) is directly or indirectly controlled by, or has
10 controlling equity interest directly or indirectly owned,
11 beneficially or of record, through any form of ownership
12 structure, by a manufacturer, importer, distributor, or
13 licensee, or an affiliate, spin-off company, parent,
14 subsidiary, or agent thereof;

15 (2) has its controlling equity interest directly or
16 indirectly controlled or owned, beneficially or of record,
17 through any form of ownership structure, by one or more
18 persons who also directly or indirectly control or own,
19 beneficially or of record, a controlling equity interest
20 of a manufacturer or importer, or an affiliate thereof; or

21 (3) shares common management with a manufacturer,
22 importer, or distributor, or an affiliate, spin-off
23 company, parent, subsidiary, or agent thereof, where the
24 relationships create operational control over the
25 management or policies of that person.

26 "Common entity" does not include:

1 (1) any person engaged in the manufacturing, assembly,
2 sale, or distribution of motor vehicle parts, components,
3 accessories, or vehicle services, provided the person is
4 not engaged in the sale or distribution of new motor
5 vehicles; or

6 (2) any financial institution chartered or authorized
7 to do business in this State, provided the financial
8 institution is not engaged in the sale or distribution of
9 new motor vehicles.

10 (x) "Independent person" means a person who is not an
11 agent, parent, subsidiary, common entity, or officer,
12 director, or employed representative of a manufacturer or
13 distributor.

14 (Source: P.A. 100-308, eff. 8-24-17.)

15 (815 ILCS 710/4) (from Ch. 121 1/2, par. 754)

16 Sec. 4. Unfair competition and practices.

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

23 (b) It shall be deemed a violation for any manufacturer,
24 factory branch, factory representative, distributor or
25 wholesaler, distributor branch, distributor representative or

1 motor vehicle dealer to engage in any action with respect to a
2 franchise which is arbitrary, in bad faith or unconscionable
3 and which causes damage to any of the parties or to the public,
4 including directly or indirectly competing with its
5 franchisees in the sale, lease, or warranty service of new
6 motor vehicles.

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

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

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

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

4 (c-5) A manufacturer, a distributor, a wholesaler, a
5 distributor branch or division, a factory branch or division,
6 or a wholesale branch or division, or officer, agent, or other
7 representative thereof may not:

8 (1) require a motor vehicle dealer to offer a
9 secondary product; or

10 (2) prohibit a motor vehicle dealer from offering a
11 secondary product, including, but not limited to:

12 (A) service contracts;

13 (B) maintenance agreements;

14 (C) extended warranties;

15 (D) protection product guarantees;

16 (E) guaranteed asset protection waivers;

17 (F) insurance;

18 (G) replacement parts;

19 (H) vehicle accessories;

20 (I) oil; or

21 (J) supplies.

22 It is not a violation of this subsection to offer an
23 incentive program to motor vehicle dealers to encourage them
24 to sell or offer to sell a secondary product approved,
25 endorsed, sponsored, or offered by the manufacturer,
26 distributor, wholesaler, distributor branch or division,

1 factory branch or division, wholesale branch or division, or
2 officer, agent, or other representative thereof, provided the
3 program does not provide vehicle sales or service incentives.

4 It is not a violation of this subsection to prohibit a
5 motor vehicle dealer from using secondary products for any
6 repair work paid for under the terms of a warranty, recall,
7 service contract, extended warranty, maintenance plan, or
8 certified pre-owned vehicle program established or offered by
9 the manufacturer, distributor, wholesaler, distributor branch
10 or division, factory branch or division, or wholesale branch
11 or division, or officer, agent, or other representative
12 thereof.

13 As used in this subsection, "secondary product" means all
14 products that are not new motor vehicles or original equipment
15 manufacturer parts.

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

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

24 (2) to fail or refuse to advise or disclose to any
25 motor vehicle dealer having a franchise or selling
26 agreement, upon written request therefor, the basis upon

1 which new motor vehicles of the same line make are
2 allocated or distributed to motor vehicle dealers in the
3 State and the basis upon which the current allocation or
4 distribution is being made or will be made to such motor
5 vehicle dealer;

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

26 (4) to coerce, or attempt to coerce, any motor vehicle

1 dealer to enter into any agreement with such manufacturer,
2 distributor, wholesaler, distributor branch or division,
3 factory branch or division, or wholesale branch or
4 division, or officer, agent or other representative
5 thereof, or to do any other act prejudicial to the dealer
6 by threatening to reduce his allocation of motor vehicles
7 or cancel any franchise or any selling agreement existing
8 between such manufacturer, distributor, wholesaler,
9 distributor branch or division, or factory branch or
10 division, or wholesale branch or division, and the dealer.
11 However, notice in good faith to any motor vehicle dealer
12 of the dealer's violation of any terms or provisions of
13 such franchise or selling agreement or of any law or
14 regulation applicable to the conduct of a motor vehicle
15 dealer shall not constitute a violation of this Act;

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

21 (6) to cancel or terminate the franchise or selling
22 agreement of a motor vehicle dealer without good cause and
23 without giving notice as hereinafter provided; to fail or
24 refuse to extend the franchise or selling agreement of a
25 motor vehicle dealer upon its expiration without good
26 cause and without giving notice as hereinafter provided;

1 or, to offer a renewal, replacement or succeeding
2 franchise or selling agreement containing terms and
3 provisions the effect of which is to substantially change
4 or modify the sales and service obligations or capital
5 requirements of the motor vehicle dealer arbitrarily and
6 without good cause and without giving notice as
7 hereinafter provided notwithstanding any term or provision
8 of a franchise or selling agreement.

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

21 (i) the business operations of the franchisee
22 have been abandoned or the franchisee has failed
23 to conduct customary sales and service operations
24 during customary business hours for at least 7
25 consecutive business days unless such closing is
26 due to an act of God, strike or labor difficulty or

1 other cause over which the franchisee has no
2 control; or

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

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

15 (B) If a manufacturer, distributor, wholesaler,
16 distributor branch or division, factory branch or
17 division or wholesale branch or division intends to
18 change substantially or modify the sales and service
19 obligations or capital requirements of a motor vehicle
20 dealer as a condition to extending or renewing the
21 existing franchise or selling agreement of such motor
22 vehicle dealer, it shall send a letter by certified
23 mail, return receipt requested, to the affected
24 franchisee at least 60 days before the date of
25 expiration of the franchise or selling agreement. Each
26 notice of proposed action shall include a detailed

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

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

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

18 The manufacturer shall have the burden of proof to
19 establish that good cause exists to cancel or
20 terminate, or fail to extend or renew the franchise or
21 selling agreement of a motor vehicle dealer or
22 franchisee, and to change substantially or modify the
23 sales and service obligations or capital requirements
24 of a motor vehicle dealer as a condition to extending
25 or renewing the existing franchise or selling
26 agreement. The determination whether good cause exists

1 to cancel, terminate, or refuse to renew or extend the
2 franchise or selling agreement, or to change or modify
3 the obligations of the dealer as a condition to offer
4 renewal, replacement, or succession shall be made by
5 the Board under subsection (d) of Section 12 of this
6 Act.

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

18 (E) The manufacturer may not cancel or terminate,
19 or fail to extend or renew a franchise or selling
20 agreement or change or modify the obligations of the
21 franchisee as a condition to offering a renewal,
22 replacement, or succeeding franchise or selling
23 agreement before the hearing process is concluded as
24 prescribed by this Act, and thereafter, if the Board
25 determines that the manufacturer has failed to meet
26 its burden of proof and that good cause does not exist

1 to allow the proposed action;

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

21 (8) to require or otherwise coerce a motor vehicle
22 dealer to underutilize the motor vehicle dealer's
23 facilities by requiring or otherwise coercing the motor
24 vehicle dealer to exclude or remove from the motor vehicle
25 dealer's facilities operations for selling or servicing of
26 any vehicles for which the motor vehicle dealer has a

1 franchise agreement with another manufacturer,
2 distributor, wholesaler, distribution branch or division,
3 or officer, agent, or other representative thereof;
4 provided, however, that, in light of all existing
5 circumstances, (i) the motor vehicle dealer maintains a
6 reasonable line of credit for each make or line of new
7 motor vehicle, (ii) the new motor vehicle dealer remains
8 in compliance with any reasonable facilities requirements
9 of the manufacturer, (iii) no change is made in the
10 principal management of the new motor vehicle dealer, and
11 (iv) the addition of the make or line of new motor vehicles
12 would be reasonable. The reasonable facilities requirement
13 set forth in item (ii) of subsection (d)(8) shall not
14 include any requirement that a franchisee establish or
15 maintain exclusive facilities, personnel, or display
16 space. Any decision by a motor vehicle dealer to sell
17 additional makes or lines at the motor vehicle dealer's
18 facility shall be presumed to be reasonable, and the
19 manufacturer shall have the burden to overcome that
20 presumption. A motor vehicle dealer must provide a written
21 notification of its intent to add a make or line of new
22 motor vehicles to the manufacturer. If the manufacturer
23 does not respond to the motor vehicle dealer, in writing,
24 objecting to the addition of the make or line within 60
25 days after the date that the motor vehicle dealer sends
26 the written notification, then the manufacturer shall be

1 deemed to have approved the addition of the make or line;

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

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

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

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

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

1 wholesaler;

2 (10) to take any adverse action against a dealer
3 pursuant to an export or sale-for-resale prohibition
4 because the dealer sold or leased a vehicle to a customer
5 who either exported the vehicle to a foreign country or
6 resold the vehicle in violation of the prohibition, unless
7 the export or sale-for-resale prohibition policy was
8 provided to the dealer in writing either electronically or
9 on paper, prior to the sale or lease, and the dealer knew
10 or reasonably should have known of the customer's intent
11 to export or resell the vehicle in violation of the
12 prohibition at the time of the sale or lease. If the dealer
13 causes the vehicle to be registered and titled in this or
14 any other state, and collects or causes to be collected
15 any applicable sales or use tax to this State, a
16 rebuttable presumption is established that the dealer did
17 not have reason to know of the customer's intent to resell
18 the vehicle;

19 (11) to coerce or require any dealer to construct
20 improvements to his or her facilities or to install new
21 signs or other franchiser image elements that replace or
22 substantially alter those improvements, signs, or
23 franchiser image elements completed within the past 10
24 years that were required and approved by the manufacturer
25 or one of its affiliates. The 10-year period under this
26 paragraph (11) begins to run for a dealer, including that

1 dealer's successors and assigns, on the date that the
2 manufacturer gives final written approval of the facility
3 improvements or installation of signs or other franchiser
4 image elements or the date that the dealer receives a
5 certificate of occupancy, whichever is later. For the
6 purpose of this paragraph (11), the term "substantially
7 alter" does not include routine maintenance, including,
8 but not limited to, interior painting, that is reasonably
9 necessary to keep a dealer facility in attractive
10 condition; ~~or~~

11 (12) to require a dealer to purchase goods or services
12 to make improvements to the dealer's facilities from a
13 vendor selected, identified, or designated by a
14 manufacturer or one of its affiliates by agreement,
15 program, incentive provision, or otherwise without making
16 available to the dealer the option to obtain the goods or
17 services of substantially similar quality and overall
18 design from a vendor chosen by the dealer and approved by
19 the manufacturer; however, approval by the manufacturer
20 shall not be unreasonably withheld, and the dealer's
21 option to select a vendor shall not be available if the
22 manufacturer provides substantial reimbursement for the
23 goods or services offered. "Substantial reimbursement"
24 means an amount equal to or greater than the cost savings
25 that would result if the dealer were to utilize a vendor of
26 the dealer's own selection instead of using the vendor

1 identified by the manufacturer. For the purpose of this
2 paragraph (12), the term "goods" does not include movable
3 displays, brochures, and promotional materials containing
4 material subject to the intellectual property rights of a
5 manufacturer. If signs, other than signs containing the
6 manufacturer's brand or logo or free-standing signs that
7 are not directly attached to a building, or other
8 franchiser image or design elements or trade dress are to
9 be leased to the dealer by a vendor selected, identified,
10 or designated by the manufacturer, the dealer has the
11 right to purchase the signs or other franchiser image or
12 design elements or trade dress of substantially similar
13 quality and design from a vendor selected by the dealer if
14 the signs, franchiser image or design elements, or trade
15 dress are approved by the manufacturer. Approval by the
16 manufacturer shall not be unreasonably withheld. This
17 paragraph (12) shall not be construed to allow a dealer or
18 vendor to impair, infringe upon, or eliminate, directly or
19 indirectly, the intellectual property rights of the
20 manufacturer, including, but not limited to, the
21 manufacturer's intellectual property rights in any
22 trademarks or trade dress, or other intellectual property
23 interests owned or controlled by the manufacturer. This
24 paragraph (12) shall not be construed to permit a dealer
25 to erect or maintain signs that do not conform to the
26 manufacturer's intellectual property rights or trademark

1 or trade dress usage guidelines; or -

2 (13) to establish or utilize any common entity to
3 sell, lease, or otherwise distribute new motor vehicles
4 directly to consumers or to circumvent the manufacturer's
5 new motor vehicle distribution obligations under this Act,
6 if the manufacturer, including any common entities,
7 currently maintains or previously maintained a franchise
8 or selling agreement with a motor vehicle dealer for the
9 retail sale of motor vehicles in this State.

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

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

18 (2) to offer to sell or lease, or to sell or lease, any
19 new motor vehicle to any motor vehicle dealer at a lower
20 actual price therefor than the actual price offered to any
21 other motor vehicle dealer for the same model vehicle
22 similarly equipped or to utilize any device including, but
23 not limited to, sales promotion plans or programs which
24 result in such lesser actual price or fail to make
25 available to any motor vehicle dealer any preferential
26 pricing, incentive, rebate, finance rate, or low interest

1 loan program offered to competing motor vehicle dealers in
2 other contiguous states. However, the provisions of this
3 paragraph shall not apply to sales to a motor vehicle
4 dealer for resale to any unit of the United States
5 Government, the State or any of its political
6 subdivisions;

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

18 (4) to prevent or attempt to prevent by contract or
19 otherwise any motor vehicle dealer or franchisee from
20 changing the executive management control of the motor
21 vehicle dealer or franchisee unless the franchiser, having
22 the burden of proof, proves that such change of executive
23 management will result in executive management control by
24 a person or persons who are not of good moral character or
25 who do not meet the franchiser's existing and, with
26 consideration given to the volume of sales and service of

1 the dealership, uniformly applied minimum business
2 experience standards in the market area. However, where
3 the manufacturer rejects a proposed change in executive
4 management control, the manufacturer shall give written
5 notice of his reasons to the dealer within 60 days of
6 notice to the manufacturer by the dealer of the proposed
7 change. If the manufacturer does not send a letter to the
8 franchisee by certified mail, return receipt requested,
9 within 60 days from receipt by the manufacturer of the
10 proposed change, then the change of the executive
11 management control of the franchisee shall be deemed
12 accepted as proposed by the franchisee, and the
13 manufacturer shall give immediate effect to such change;

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

24 (6) to refuse to give effect to or prevent or attempt
25 to prevent by contract or otherwise any motor vehicle
26 dealer or any officer, partner or stockholder of any motor

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

17 (A) If the manufacturer intends to refuse to
18 approve the sale or transfer of all or a part of the
19 interest, then it shall, within 60 days from receipt
20 of the completed application forms generally utilized
21 by a manufacturer to conduct its review and a copy of
22 all agreements regarding the proposed transfer, send a
23 letter by certified mail, return receipt requested,
24 advising the franchisee of any refusal to approve the
25 sale or transfer of all or part of the interest and
26 shall state that the dealer only has 30 days from the

1 receipt of the notice to file with the Motor Vehicle
2 Review Board a written protest against the proposed
3 action. The notice shall set forth specific criteria
4 used to evaluate the prospective transferee and the
5 grounds for refusing to approve the sale or transfer
6 to that transferee. Within 30 days from the
7 franchisee's receipt of the manufacturer's notice, the
8 franchisee may file with the Board a written protest
9 against the proposed action.

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

18 The manufacturer shall have the burden of proof to
19 establish that good cause exists to refuse to approve
20 the sale or transfer to the transferee. The
21 determination whether good cause exists to refuse to
22 approve the sale or transfer shall be made by the Board
23 under subdivisions (6) (B). The manufacturer shall not
24 refuse to approve the sale or transfer by a dealer or
25 an officer, partner, or stockholder of a franchise or
26 any part of the interest to any person or persons

1 before the hearing process is concluded as prescribed
2 by this Act, and thereafter if the Board determines
3 that the manufacturer has failed to meet its burden of
4 proof and that good cause does not exist to refuse to
5 approve the sale or transfer to the transferee.

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

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

24 (8) to grant an additional franchise in the relevant
25 market area of an existing franchise of the same line make
26 or to relocate an existing motor vehicle dealership within

1 or into a relevant market area of an existing franchise of
2 the same line make. However, if the manufacturer wishes to
3 grant such an additional franchise to an independent
4 person in a bona fide relationship in which such person is
5 prepared to make a significant investment subject to loss
6 in such a dealership, or if the manufacturer wishes to
7 relocate an existing motor vehicle dealership, then the
8 manufacturer shall send a letter by certified mail, return
9 receipt requested, to each existing dealer or dealers of
10 the same line make whose relevant market area includes the
11 proposed location of the additional or relocated franchise
12 at least 60 days before the manufacturer grants an
13 additional franchise or relocates an existing franchise of
14 the same line make within or into the relevant market area
15 of an existing franchisee of the same line make. Each
16 notice shall set forth the specific grounds for the
17 proposed grant of an additional or relocation of an
18 existing franchise and shall state that the dealer has
19 only 30 days from the date of receipt of the notice to file
20 with the Motor Vehicle Review Board a written protest
21 against the proposed action. Unless the parties agree upon
22 the grant or establishment of the additional or relocated
23 franchise within 30 days from the date the notice was
24 received by the existing franchisee of the same line make
25 or any person entitled to receive such notice, the
26 franchisee or other person may file with the Board a

1 written protest against the grant or establishment of the
2 proposed additional or relocated franchise.

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

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

1 franchise or relocation of the existing franchise.

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

16 A. (Blank).

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

1 operation for 18 months or more shall be deemed the
2 grant of an additional franchise or selling agreement.

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

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

25 (9) to require a motor vehicle dealer to assent to a
26 release, assignment, novation, waiver or estoppel which

1 would relieve any person from liability imposed by this
2 Act;

3 (10) to prevent or refuse to give effect to the
4 succession to the ownership or management control of a
5 dealership by any legatee under the will of a dealer or to
6 an heir under the laws of descent and distribution of this
7 State unless the franchisee has designated a successor to
8 the ownership or management control under the succession
9 provisions of the franchise. Unless the franchiser, having
10 the burden of proof, proves that the successor is a person
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, any
16 designated successor of a dealer or franchisee may succeed
17 to the ownership or management control of a dealership
18 under the existing franchise if:

19 (i) The designated successor gives the
20 franchiser written notice by certified mail,
21 return receipt requested, of his or her intention
22 to succeed to the ownership of the dealer within
23 60 days of the dealer's death or incapacity; and

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

1 Notwithstanding the foregoing, in the event the motor
2 vehicle dealer or franchisee and manufacturer have duly
3 executed an agreement concerning succession rights prior
4 to the dealer's death or incapacitation, the agreement
5 shall be observed.

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

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

26 Within 30 days from the date the notice was

1 received by the designated successor or any other
2 person entitled to notice, the designee or other
3 person may file with the Board a written protest
4 against the proposed action.

5 When a 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 franchiser that
11 filed the notice of intention of the proposed action
12 and to the protesting designee or such other person.

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

1 (B) No manufacturer shall impose any conditions
2 upon honoring the succession and continuing the
3 existing franchise agreement with the designated
4 successor other than that the franchisee has
5 designated a successor to the ownership or management
6 control under the succession provisions of the
7 franchise, or that the designated successor is of good
8 moral character or meets the reasonable capital
9 standards and, with consideration given to the volume
10 of sales and service of the dealership, uniformly
11 applied minimum business experience standards in the
12 market area;

13 (11) to prevent or refuse to approve a proposal to
14 establish a successor franchise at a location previously
15 approved by the franchiser when submitted with the
16 voluntary termination by the existing franchisee unless
17 the successor franchisee would not otherwise qualify for a
18 new motor vehicle dealer's license under the Illinois
19 Vehicle Code or unless the franchiser, having the burden
20 of proof, proves that such proposed successor is not of
21 good moral character or does not meet the franchiser's
22 existing and reasonable capital standards and, with
23 consideration given to the volume of sales and service of
24 the dealership, uniformly applied minimum business
25 experience standards in the market area. However, when
26 such a rejection of a proposal is made, the manufacturer

1 shall give written notice of its reasons to the franchisee
2 within 60 days of receipt by the manufacturer of the
3 proposal. However, nothing herein shall be construed to
4 prevent a franchiser from implementing affirmative action
5 programs providing business opportunities for minorities,
6 or from complying with applicable federal, State or local
7 law;

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

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

25 (14) to exercise a right of first refusal or other
26 right to acquire a franchise from a dealer, unless the

1 manufacturer:

2 (A) notifies the dealer in writing that it intends
3 to exercise its right to acquire the franchise not
4 later than 60 days after the manufacturer's or
5 distributor's receipt of a notice of the proposed
6 transfer from the dealer and all information and
7 documents reasonably and customarily required by the
8 manufacturer or distributor supporting the proposed
9 transfer;

10 (B) pays to the dealer the same or greater
11 consideration as the dealer has contracted to receive
12 in connection with the proposed transfer or sale of
13 all or substantially all of the dealership assets,
14 stock, or other ownership interest, including the
15 purchase or lease of all real property, leasehold, or
16 improvements related to the transfer or sale of the
17 dealership. Upon exercise of the right of first
18 refusal or such other right, the manufacturer or
19 distributor shall have the right to assign the lease
20 or to convey the real property;

21 (C) assumes all of the duties, obligations, and
22 liabilities contained in the agreements that were to
23 be assumed by the proposed transferee and with respect
24 to which the manufacturer or distributor exercised the
25 right of first refusal or other right to acquire the
26 franchise;

1 (D) reimburses the proposed transferee for all
2 reasonable expenses incurred in evaluating,
3 investigating, and negotiating the transfer of the
4 dealership prior to the manufacturer's or
5 distributor's exercise of its right of first refusal
6 or other right to acquire the dealership. For purposes
7 of this paragraph, "reasonable expenses" includes the
8 usual and customary legal and accounting fees charged
9 for similar work, as well as expenses associated with
10 the evaluation and investigation of any real property
11 on which the dealership is operated. The proposed
12 transferee shall submit an itemized list of its
13 expenses to the manufacturer or distributor not later
14 than 30 days after the manufacturer's or distributor's
15 exercise of the right of first refusal or other right
16 to acquire the motor vehicle franchise. The
17 manufacturer or distributor shall reimburse the
18 proposed transferee for its expenses not later than 90
19 days after receipt of the itemized list. A
20 manufacturer or distributor may request to be provided
21 with the itemized list of expenses before exercising
22 the manufacturer's or distributor's right of first
23 refusal.

24 Except as provided in this paragraph (14), neither the
25 selling dealer nor the manufacturer or distributor shall
26 have any liability to any person as a result of a

1 manufacturer or distributor exercising its right of first
2 refusal.

3 For the purpose of this paragraph, "proposed
4 transferee" means the person to whom the franchise would
5 have been transferred to, or was proposed to be
6 transferred to, had the right of first refusal or other
7 right to acquire the franchise not been exercised by the
8 manufacturer or distributor.

9 (f) It is deemed a violation for a manufacturer, a common
10 entity, a distributor, a wholesaler, a distributor branch or
11 division, a factory branch or division, or a wholesale branch
12 or division, or officer, agent, broker, shareholder, except a
13 shareholder of 1% or less of the outstanding shares of any
14 class of securities of a manufacturer, distributor, or
15 wholesaler which is a publicly traded corporation, or other
16 representative, directly or indirectly, to own or operate a
17 place of business as a motor vehicle franchisee or motor
18 vehicle financing affiliate or to perform warranty service for
19 retail consumers. ~~, except that, this subsection shall not~~
20 ~~prohibit~~

21 A manufacturer or distributor, agent of a manufacturer or
22 distributor, or parent, subsidiary, common entity, officer, or
23 employed representative of a manufacturer or distributor,
24 other than a manufacturer that was lawfully licensed to sell
25 new motor vehicles in this State directly to customers before
26 January 1, 2022, shall not directly or indirectly own,

1 operate, or control, by contract, agreement, or otherwise, a
2 motor vehicle dealership in this State or be eligible for a
3 motor vehicle dealer license under Section 5-101 of the
4 Illinois Vehicle Code, regardless of the entity's branding as
5 separate or independent of the controlling manufacturer. Any
6 person who is not prohibited by this Section from owning,
7 operating, or controlling a motor vehicle dealership may be
8 issued a dealer license, if applicable licensing requirements
9 under the Illinois Vehicle Code are satisfied. Any person
10 prohibited from owning, operating, or controlling a motor
11 vehicle dealership under this Section may not be issued a
12 dealer license under Section 5-101 of the Illinois Vehicle
13 Code.

14 This subsection does not prohibit:

15 (1) the ownership or operation of a place of business
16 by a manufacturer, distributor, or wholesaler for a
17 period, not to exceed 18 months, during the transition
18 from one motor vehicle franchisee to another;

19 (2) the investment in a motor vehicle franchisee by a
20 manufacturer, distributor, or wholesaler if the investment
21 is for the sole purpose of enabling a partner or
22 shareholder in that motor vehicle franchisee to acquire an
23 interest in that motor vehicle franchisee and that partner
24 or shareholder is not otherwise employed by or associated
25 with the manufacturer, distributor, or wholesaler and
26 would not otherwise have the requisite capital investment

1 funds to invest in the motor vehicle franchisee, and has
2 the right to purchase the entire equity interest of the
3 manufacturer, distributor, or wholesaler in the motor
4 vehicle franchisee within a reasonable period of time not
5 to exceed 5 years; or

6 (3) the ownership or operation of a place of business
7 by a manufacturer that manufactures only diesel engines
8 for installation in trucks having a gross vehicle weight
9 rating of more than 16,000 pounds that are required to be
10 registered under the Illinois Vehicle Code, provided that:

11 (A) the manufacturer does not otherwise
12 manufacture, distribute, or sell motor vehicles as
13 defined under Section 1-217 of the Illinois Vehicle
14 Code;

15 (B) the manufacturer owned a place of business and
16 it was in operation as of January 1, 2016;

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

22 (D) to further avoid any acts or practices, the
23 effect of which may be to lessen or eliminate
24 competition, the manufacturer provides to dealers on
25 substantially equal terms access to all support for
26 completing repairs, including, but not limited to,

1 parts and assemblies, training, and technical service
2 bulletins, and other information concerning repairs
3 that the manufacturer provides to facilities that are
4 owned, operated, or controlled by the manufacturer;
5 and

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

15 (g) Notwithstanding the terms, provisions, or conditions
16 of any agreement or waiver, it shall be deemed a violation for
17 a manufacturer, a distributor, a wholesaler, a distributor
18 branch or division, a factory branch or division, or a
19 wholesale branch or division, or officer, agent, common
20 entity, or other representative thereof, to directly or
21 indirectly condition the awarding of a franchise to a
22 prospective new motor vehicle dealer, the addition of a line
23 make or franchise to an existing dealer, the renewal of a
24 franchise of an existing dealer, the approval of the
25 relocation of an existing dealer's facility, or the approval
26 of the sale or transfer of the ownership of a franchise on the

1 willingness of a dealer, proposed new dealer, or owner of an
2 interest in the dealership facility to enter into a site
3 control agreement or exclusive use agreement unless separate
4 and reasonable consideration was offered and accepted for that
5 agreement.

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

24 If a manufacturer exercises any right of first refusal to
25 purchase or lease or option to purchase or lease with regard to
26 a transfer, sale, or lease of the dealership premises to a

1 person who is not an immediate family member of the dealer,
2 then (1) within 60 days from the receipt of the completed
3 application forms generally utilized by a manufacturer to
4 conduct its review and a copy of all agreements regarding the
5 proposed transfer, the manufacturer must notify the dealer of
6 its intent to exercise the right of first refusal to purchase
7 or lease or option to purchase or lease and (2) the exercise of
8 the right of first refusal to purchase or lease or option to
9 purchase or lease must result in the dealer receiving
10 consideration, terms, and conditions that either are the same
11 as or greater than that which they have contracted to receive
12 in connection with the proposed transfer, sale, or lease of
13 the dealership premises.

14 Any provision contained in any agreement entered into on
15 or after November 25, 2009 (the effective date of Public Act
16 96-824) that is inconsistent with the provisions of this
17 subsection (g) shall be voidable at the election of the
18 affected dealer, prospective dealer, or owner of an interest
19 in the dealership facility.

20 (h) For purposes of this subsection:

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

26 (i) A change in ownership, operation, or control of

1 the predecessor manufacturer by sale or transfer of
2 assets, corporate stock or other equity interest,
3 assignment, merger, consolidation, combination, joint
4 venture, redemption, court-approved sale, operation of law
5 or otherwise.

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

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

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

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

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

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

25 For a period of 3 years from: (i) the date that a successor
26 manufacturer acquires, succeeds to, or assumes any part of the

1 business of a predecessor manufacturer; (ii) the last day that
2 a former franchisee is authorized to remain in business as a
3 franchised dealer with respect to a particular franchise under
4 a termination agreement or deferred termination agreement with
5 a predecessor or successor manufacturer; (iii) the last day
6 that a former franchisee that was cancelled, terminated,
7 nonrenewed, noncontinued, rejected, nonassumed, or otherwise
8 ended by a predecessor or successor manufacturer is authorized
9 to remain in business as a franchised dealer with respect to a
10 particular franchise; or (iv) November 25, 2009 (the effective
11 date of Public Act 96-824), whichever is latest, it shall be
12 unlawful for such successor manufacturer to enter into a same
13 line make franchise with any person or to permit the
14 relocation of any existing same line make franchise, for a
15 line make of the predecessor manufacturer that would be
16 located or relocated within the relevant market area of a
17 former franchisee who owned or leased a dealership facility in
18 that relevant market area without first offering the
19 additional or relocated franchise to the former franchisee, or
20 the designated successor of such former franchisee in the
21 event the former franchisee is deceased or a person with a
22 disability, at no cost and without any requirements or
23 restrictions other than those imposed generally on the
24 manufacturer's other franchisees at that time, unless one of
25 the following applies:

26 (1) As a result of the former franchisee's

1 cancellation, termination, noncontinuance, or nonrenewal
2 of the franchise, the predecessor manufacturer had
3 consolidated the line make with another of its line makes
4 for which the predecessor manufacturer had a franchisee
5 with a then-existing dealership facility located within
6 that relevant market area.

7 (2) The successor manufacturer has paid the former
8 franchisee, or the designated successor of such former
9 franchisee in the event the former franchisee is deceased
10 or a person with a disability, the fair market value of the
11 former franchisee's franchise on (i) the date the
12 franchiser announces the action which results in the
13 termination, cancellation, or nonrenewal; or (ii) the date
14 the action which results in termination, cancellation, or
15 nonrenewal first became general knowledge; or (iii) the
16 day 12 months prior to the date on which the notice of
17 termination, cancellation, or nonrenewal is issued,
18 whichever amount is higher. Payment is due within 90 days
19 of the effective date of the termination, cancellation, or
20 nonrenewal. If the termination, cancellation, or
21 nonrenewal is due to a manufacturer's change in
22 distributors, the manufacturer may avoid paying fair
23 market value to the dealer if the new distributor or the
24 manufacturer offers the dealer a franchise agreement with
25 terms acceptable to the dealer.

26 (3) The successor manufacturer proves that it would

1 have had good cause to terminate the franchise agreement
2 of the former franchisee, or the successor of the former
3 franchisee under item (e)(10) in the event that the former
4 franchisee is deceased or a person with a disability. The
5 determination of whether the successor manufacturer would
6 have had good cause to terminate the franchise agreement
7 of the former franchisee, or the successor of the former
8 franchisee, shall be made by the Board under subsection
9 (d) of Section 12. A successor manufacturer that seeks to
10 assert that it would have had good cause to terminate a
11 former franchisee, or the successor of the former
12 franchisee, must file a petition seeking a hearing on this
13 issue before the Board and shall have the burden of
14 proving that it would have had good cause to terminate the
15 former franchisee or the successor of the former
16 franchisee. No successor dealer, other than the former
17 franchisee, may be appointed or franchised by the
18 successor manufacturer within the relevant market area of
19 the former franchisee until the Board has held a hearing
20 and rendered a determination on the issue of whether the
21 successor manufacturer would have had good cause to
22 terminate the former franchisee.

23 In the event that a successor manufacturer attempts to
24 enter into a same line make franchise with any person or to
25 permit the relocation of any existing line make franchise
26 under this subsection (h) at a location that is within the

1 relevant market area of 2 or more former franchisees, then the
2 successor manufacturer may not offer it to any person other
3 than one of those former franchisees unless the successor
4 manufacturer can prove that at least one of the 3 exceptions in
5 items (1), (2), and (3) of this subsection (h) applies to each
6 of those former franchisees.

7 (i) It shall be deemed a violation of this Section for any
8 manufacturer with an established franchise dealer network in
9 this State, either directly or indirectly, or through a common
10 entity, to engage in the sale, lease, or warranty servicing of
11 new motor vehicles in a manner that bypasses or competes with
12 the manufacturer's existing franchisee network, including, but
13 not limited to:

14 (1) engaging in practices intended to circumvent,
15 evade, or undermine the rights, obligations, or
16 protections afforded to franchisees under this Act; or

17 (2) establishing or using a newly branded entity or a
18 spin-off, affiliated, parent, or subsidiary entity to
19 conduct retail operations outside the franchise system.

20 (j) A manufacturer, distributor, or common entity shall
21 not engage in the sale of new motor vehicles directly to the
22 general public in this State unless the manufacturer or
23 distributor was lawfully licensed to sell new motor vehicles
24 directly to consumers in this State before January 1, 2022.

25 (Source: P.A. 102-433, eff. 1-1-22.)

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

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

4 (a) Every manufacturer, distributor, wholesaler,
5 distributor branch or division, factory branch or division, or
6 wholesale branch or division shall properly fulfill any
7 warranty agreement and adequately and fairly compensate each
8 of its motor vehicle dealers for labor and parts.

9 (b) Adequate and fair compensation requires the
10 manufacturer to pay each dealer no less than the amount the
11 retail customer pays for the same services with regard to rate
12 and time.

13 Any time guide previously agreed to by the manufacturer
14 and the dealer for extended warranty repairs may be used in
15 lieu of actual time expended. In the event that a time guide
16 has not been agreed to for warranty repairs, or said time guide
17 does not define time for an applicable warranty repair, the
18 manufacturer's time guide shall be used, multiplied by 1.5.

19 In no event shall such compensation fail to include full
20 compensation for diagnostic work, as well as repair service,
21 labor, and parts. Time allowances for the diagnosis and
22 performance of warranty work and service shall be no less than
23 charged to retail customers for the same work to be performed.

24 No warranty or factory compensated repairs shall be
25 excluded from this requirement, including recalls or other
26 voluntary stop-sell repairs required by the manufacturer. If a

1 manufacturer is required to issue a recall, the dealer will be
2 compensated for labor time as above stated.

3 Furthermore, manufacturers shall pay the dealer the same
4 effective labor rate (using the 100 sequential repair orders
5 chosen and submitted by the dealer less simple maintenance
6 repair orders) that the dealer receives for customer-pay
7 repairs. This requirement includes vehicle diagnostic times
8 for all warranty repairs. Additionally, if a technician is
9 required to communicate with a Technical Assistance
10 Center/Engineering/or some external manufacturer source in
11 order to provide a warranty repair, the manufacturer shall pay
12 for the time from start of communications (including hold
13 time) until the communication is complete.

14 The dealer may submit a request to the manufacturer for
15 warranty labor rate increases a maximum of once per calendar
16 year.

17 A claim made by a franchised motor vehicle dealer for
18 compensation under this Section shall be either approved or
19 disapproved within 30 days after the claim is submitted to the
20 manufacturer in the manner and on the forms the manufacturer
21 reasonably prescribes. An approved claim shall be paid within
22 30 days after its approval. If a claim is not specifically
23 disapproved in writing or by electronic transmission within 30
24 days after the date on which the manufacturer receives it, the
25 claim shall be considered to be approved and payment shall
26 follow within 30 days.

1 In no event shall compensation to a motor vehicle dealer
2 for labor times and labor rates be less than the rates charged
3 by such dealer for like service to retail customers for
4 nonwarranty service and repairs. Additionally, the
5 manufacturer shall reimburse the dealer for any parts provided
6 in satisfaction of a warranty at the prevailing retail price
7 charged by that dealer for the same parts when not provided in
8 satisfaction of a warranty; provided that such dealer's
9 prevailing retail price is not unreasonable when compared with
10 that of the holders of motor vehicle franchises of ~~from~~ the
11 same line make ~~manufacturer~~ for identical parts in the
12 geographic area in which the dealer is engaged in business.

13 There shall be no reduction in payments due to
14 preestablished market norms or market averages. Manufacturers
15 are prohibited from establishing restrictions or limitations
16 of customer repair frequency due to failure rate indexes or
17 national failure averages.

18 No debit reduction or charge back of any item on a warranty
19 repair order may be made absent a finding of fraud or illegal
20 actions by the dealer.

21 A warranty claim timely made shall not be deemed invalid
22 solely because unavailable parts cause additional use and
23 mileage on the vehicle.

24 If a manufacturer imposes a recall or stop sale on any new
25 vehicle in a dealer's inventory that prevents the sale of the
26 vehicle, the manufacturer shall compensate the dealer for any

1 interest and storage until the vehicle is repaired and made
2 ready for sale.

3 Manufacturers are not permitted to impose any form of cost
4 recovery fees or surcharges against a franchised auto
5 dealership for payments made in accordance with this Section.

6 All claims, either original or resubmitted, made by motor
7 vehicle dealers hereunder and under Section 5 for such labor
8 and parts shall be either approved or disapproved within 30
9 days following their submission. All approved claims shall be
10 paid within 30 days following their approval. The motor
11 vehicle dealer who submits a claim which is disapproved shall
12 be notified in writing of the disapproval within the same
13 period, and each such notice shall state the specific grounds
14 upon which the disapproval is based. The motor vehicle dealer
15 shall be permitted to correct and resubmit such disapproved
16 claims within 30 days of receipt of disapproval. Any claims
17 not specifically disapproved in writing within 30 days from
18 their submission shall be deemed approved and payment shall
19 follow within 30 days. The manufacturer or franchiser shall
20 have the right to require reasonable documentation for claims
21 and to audit such claims within a one year period from the date
22 the claim was paid or credit issued by the manufacturer or
23 franchiser, and to charge back any false or unsubstantiated
24 claims. The audit and charge back provisions of this Section
25 also apply to all other incentive and reimbursement programs
26 for a period of one year after the date the claim was paid or

1 credit issued by the manufacturer or franchiser. However, the
2 manufacturer retains the right to charge back any fraudulent
3 claim if the manufacturer establishes in a court of competent
4 jurisdiction in this State that the claim is fraudulent.

5 (c) The motor vehicle franchiser shall not, by agreement,
6 by restrictions upon reimbursement, or otherwise, restrict the
7 nature and extent of services to be rendered or parts to be
8 provided so that such restriction prevents the motor vehicle
9 franchisee from satisfying the warranty by rendering services
10 in a good and workmanlike manner and providing parts which are
11 required in accordance with generally accepted standards. Any
12 such restriction shall constitute a prohibited practice.

13 (d) For the purposes of this Section, the "prevailing
14 retail price charged by that dealer for the same parts" means
15 the price paid by the motor vehicle franchisee for parts,
16 including all shipping and other charges, multiplied by the
17 sum of 1.0 and the franchisee's average percentage markup over
18 the price paid by the motor vehicle franchisee for parts
19 purchased by the motor vehicle franchisee from the motor
20 vehicle franchiser and sold at retail. The motor vehicle
21 franchisee may establish average percentage markup under this
22 Section by submitting to the motor vehicle franchiser 100
23 sequential customer paid service repair orders or 90 days of
24 customer paid service repair orders, whichever is less,
25 covering repairs made no more than 180 days before the
26 submission, and declaring what the average percentage markup

1 is. The average percentage markup so declared shall go into
2 effect 30 days following the declaration, subject to audit of
3 the submitted repair orders by the motor vehicle franchiser
4 and adjustment of the average percentage markup based on that
5 audit. Any audit must be conducted within 30 days following
6 the declaration. Only retail sales not involving warranty
7 repairs, parts covered by subsection (e) of this Section, or
8 parts supplied for routine vehicle maintenance, shall be
9 considered in calculating average percentage markup. For the
10 purpose of this subsection, "routine maintenance" includes,
11 but is not limited to: (i) the replacement of oil or other
12 fluids, filters, batteries for internal combustion engine
13 vehicles, bulbs, brake pads, rotors, nuts, bolts, or
14 fasteners; (ii) the replacement of or work on tires or wheels,
15 including wheel alignments and tire and wheel rotations; and
16 (iii) the installation of an accessory. No motor vehicle
17 franchiser shall require a motor vehicle franchisee to
18 establish average percentage markup by a methodology, or by
19 requiring information, that is unduly burdensome or time
20 consuming to provide, including, but not limited to, part by
21 part or transaction by transaction calculations. A motor
22 vehicle franchisee shall not request a change in the average
23 percentage markup more than twice in one calendar year.

24 (e) If a motor vehicle franchiser supplies a part or parts
25 for use in a repair rendered under a warranty other than by
26 sale of that part or parts to the motor vehicle franchisee, the

1 motor vehicle franchisee shall be entitled to compensation
2 equivalent to the motor vehicle franchisee's average
3 percentage markup on the part or parts, as if the part or parts
4 had been sold to the motor vehicle franchisee by the motor
5 vehicle franchiser. The requirements of this subsection (e)
6 shall not apply to entire engine assemblies, propulsion engine
7 assemblies, including electric vehicle batteries, and entire
8 transmission assemblies. In the case of those assemblies, the
9 motor vehicle franchiser shall reimburse the motor vehicle
10 franchisee up to and including 30% of what the motor vehicle
11 franchisee would have paid the motor vehicle franchiser for
12 the assembly if the assembly had not been supplied by the
13 franchiser other than by the sale of that assembly to the motor
14 vehicle franchisee.

15 (f) The obligations imposed on motor vehicle franchisers
16 by this Section shall apply to any parent, subsidiary,
17 affiliate, or agent of the motor vehicle franchiser, any
18 person under common ownership or control, any employee of the
19 motor vehicle franchiser, and any person holding 1% or more of
20 the shares of any class of securities or other ownership
21 interest in the motor vehicle franchiser, if a warranty or
22 service or repair plan is issued by that person instead of or
23 in addition to one issued by the motor vehicle franchiser.

24 (g) (Blank).

25 (Source: P.A. 102-232, eff. 1-1-22; 102-669, eff. 11-16-21.)

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