



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4108

Introduced 9/3/2021, by Rep. Jonathan Carroll

SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 105/5.935 new

35 ILCS 120/6

625 ILCS 5/5-104.2

815 ILCS 380/Act rep.

from Ch. 120, par. 445

Creates the New Vehicle Buyer Protection Act of 2021. Provides that if a manufacturer is unable to service or repair a new motor vehicle to conform to the applicable written warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle or make restitution to the buyer. Provides that it shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle: (1) the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven after 2 or more repairs; (2) the same nonconformity has been subject to repair 4 or more times; or (3) the vehicle is out of service by reason of repair for more than 30 calendar days since delivery of the vehicle to the buyer. Requires a buyer to initiate a qualified third-party dispute resolution process, if available, before asserting the presumption that a reasonable number of attempts have been made to repair the nonconformity. Prohibits a person from selling a motor vehicle without first disclosing to the prospective buyer that the vehicle had a nonconformity and the nonconformity was corrected. Contains provisions concerning a "Lemon Law Buyback" decal; a warranty buyback notice; remedies; a manufacturer's fee for each vehicle sold; sales and use tax reimbursements; and other matters. Amends the Retailers' Occupation Tax Act and the Illinois Vehicle Code. Changes references to "New Vehicle Buyer Protection Act" to "New Vehicle Buyer Protection Act of 2021". Amends the State Finance Act. Creates the Motor Vehicle Dispute Resolution Certification Fund. Repeals the New Vehicle Buyer Protection Act.

LRB102 19025 KMF 27789 b

1 AN ACT concerning business.

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

4 Section 1. Short title. This Act may be cited as the New
5 Vehicle Buyer Protection Act of 2021.

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

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

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

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

23 "Lessee" means an individual who leases a motor vehicle

1 under a lease.

2 "Manufacturer" means any individual, partnership,
3 corporation, association, or other legal relationship that
4 manufactures, assembles, or produces motor vehicles.

5 "Motor home" means a vehicular unit built on, or
6 permanently attached to, a self-propelled motor vehicle
7 chassis, chassis cab, or van, which becomes an integral part
8 of the completed vehicle, designed for human habitation for
9 recreational or emergency occupancy.

10 "New motor vehicle" means a new motor vehicle that is
11 bought or used primarily for personal, family, or household
12 purposes. "New motor vehicle" also means a new motor vehicle
13 with a gross vehicle weight under 10,000 pounds that is bought
14 or used primarily for business purposes by a person, including
15 a partnership, limited liability company, corporation,
16 association, or any other legal entity, to which not more than
17 5 motor vehicles are registered in this State. "New motor
18 vehicle" includes the chassis, cab, and that portion of a
19 motor home devoted to its propulsion, but does not include any
20 portion designed, used, or maintained primarily for human
21 habitation, a dealer-owned vehicle, and a "demonstrator" or
22 other motor vehicle sold with a manufacturer's new car
23 warranty, but does not include a motorcycle or a motor vehicle
24 which is not registered under the Illinois Vehicle Code
25 because it is to be operated or used exclusively off the
26 highways. A demonstrator is a vehicle assigned by a dealer for

1 the purpose of demonstrating qualities and characteristics
2 common to vehicles of the same or similar model and type.

3 "Nonconformity" means a nonconformity which substantially
4 impairs the use, value, or safety of the new motor vehicle to
5 the buyer or lessee.

6 "Retail seller" or "retailer" means any individual,
7 partnership, corporation, association, or other legal
8 relationship that engages in the business of selling or
9 leasing motor vehicles to retail buyers.

10 "Service contract" means a contract in writing to perform,
11 over a fixed period of time or for a specified duration,
12 services relating to the maintenance or repair of a motor
13 vehicle, except that this term does not include a policy of
14 automobile insurance as defined in Section 143.13 of the
15 Illinois Insurance Code.

16 "Supplier" means any person engaged in the business of
17 making a motor home or new motor vehicle directly or
18 indirectly available to a buyer.

19 "Written warranty" means any undertaking in writing in
20 connection with the sale by a supplier of a consumer product to
21 refund, repair, replace, or take other remedial action with
22 respect to the product if the product fails to meet the
23 specifications set forth in the undertaking.

24 Section 5. Failure to service or repair. If a manufacturer
25 or its representative in this State is unable to service or

1 repair a new motor vehicle or motor home to conform to the
2 applicable written warranties after a reasonable number of
3 attempts, the manufacturer shall either promptly replace the
4 new motor vehicle or motor home in accordance with paragraph
5 (1) or promptly make restitution to the buyer in accordance
6 with paragraph (2). However, the buyer shall be free to elect
7 restitution in lieu of replacement, and in no event shall the
8 buyer be required by the manufacturer to accept a replacement
9 vehicle.

10 (1) In the case of replacement, the manufacturer shall
11 replace the buyer's vehicle with a new motor vehicle or
12 motor home substantially identical to the new motor
13 vehicle or motor home replaced. The replacement vehicle
14 shall be accompanied by all written and implied warranties
15 that normally accompany new motor vehicles or motor homes
16 of that specific kind. The manufacturer also shall pay
17 for, or to, the buyer the amount of any sales or use tax,
18 license fees, registration fees, and other official fees
19 which the buyer is obligated to pay in connection with the
20 replacement, plus any incidental damages to which the
21 buyer is entitled under Section 30, including, but not
22 limited to, reasonable repair, towing, and rental car
23 costs actually incurred by the buyer.

24 (2) In the case of restitution, the manufacturer shall
25 make restitution in an amount equal to the actual price
26 paid or payable by the buyer, including any charges for

1 transportation and manufacturer-installed options, but
2 excluding non-manufacturer items installed by a dealer or
3 the buyer, and including any collateral charges such as
4 sales or use tax, license fees, registration fees, finance
5 interest charges, and other official fees, plus any
6 incidental damages to which the buyer is entitled under
7 Section 30, including, but not limited to, reasonable
8 repair, towing, and rental car costs actually incurred by
9 the buyer.

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

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

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

15 Section 10. Nonconformity.

16 (a) It shall be presumed that a reasonable number of
17 attempts have been made to conform a new motor vehicle or motor
18 home to the applicable written warranties if, within 18 months
19 from delivery to the buyer or 18,000 miles on the odometer of
20 the vehicle, whichever occurs first, one or more of the
21 following occurs:

22 (1) The same nonconformity results in a condition that
23 is likely to cause death or serious bodily injury if the
24 new motor vehicle or motor home is driven and the
25 nonconformity has been subject to repair 2 or more times

1 by the manufacturer or its agents, and the buyer or lessee
2 has at least once directly notified the manufacturer of
3 the need for the repair of the nonconformity.

4 (2) The same nonconformity has been subject to repair
5 4 or more times by the manufacturer or its agents and the
6 buyer has at least once directly notified the manufacturer
7 of the need for the repair of the nonconformity.

8 (3) The vehicle is out of service by reason of repair
9 of nonconformities by the manufacturer or its agents for a
10 cumulative total of more than 30 calendar days since
11 delivery of the new motor vehicle or motor home to the
12 buyer. The 30-day limit shall be extended only if repairs
13 cannot be performed due to conditions beyond the control
14 of the manufacturer or its agents. The buyer shall be
15 required to directly notify the manufacturer pursuant to
16 paragraphs (1) and (2) only if the manufacturer has
17 clearly and conspicuously disclosed to the buyer, with the
18 warranty or the owner's manual, the provisions of this
19 Section and that of Section 5, including the requirement
20 that the buyer must notify the manufacturer directly
21 pursuant to paragraphs (1) and (2). The notification, if
22 required, shall be sent to the address, if any, specified
23 clearly and conspicuously by the manufacturer in the
24 written warranty or owner's manual. This presumption shall
25 be a rebuttable presumption affecting the burden of proof,
26 and it may be asserted by the buyer in any civil action,

1 including an action in small claims court, or other formal
2 or informal proceeding.

3 (b) If a qualified third-party dispute resolution process
4 exists, and the buyer receives timely notification in writing
5 of the availability of that qualified third-party dispute
6 resolution process with a description of its operation and
7 effect, the presumption in subsection (a) may not be asserted
8 by the buyer until after the buyer has initially resorted to
9 the qualified third-party dispute resolution process as
10 required in subsection (c). Notification of the availability
11 of the qualified third-party dispute resolution process is not
12 timely if the buyer suffers any prejudice resulting from any
13 delay in giving the notification. If a qualified third-party
14 dispute resolution process does not exist, or if the buyer is
15 dissatisfied with that third-party decision, or if the
16 manufacturer or its agent neglects to promptly fulfill the
17 terms of the qualified third-party dispute resolution process
18 decision after the decision is accepted by the buyer, the
19 buyer may assert the presumption provided in subsection (a) in
20 an action to enforce the buyer's rights under Section 5. The
21 findings and decision of a qualified third-party dispute
22 resolution process shall be admissible in evidence in the
23 action without further foundation. Any period of limitation of
24 actions under any federal or State laws with respect to any
25 person shall be extended for a period equal to the number of
26 days between the date a complaint is filed with a third-party

1 dispute resolution process and the date of its decision or the
2 date before which the manufacturer or its agent is required by
3 the decision to fulfill its terms if the decision is accepted
4 by the buyer, whichever occurs later.

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

7 (1) Complies with the minimum requirements of the
8 Federal Trade Commission for informal dispute settlement
9 procedures as set forth in Part 703 of Title 16 of the Code
10 of Federal Regulations, as those regulations read on
11 January 1, 1987.

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

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

18 (4) Provides arbitrators who are assigned to decide
19 disputes with copies of, and instruction in, the
20 provisions of the Federal Trade Commission's regulations
21 in Part 703 of Title 16 of the Code of Federal Regulations
22 as those regulations read on January 1, 1987, Article 2 of
23 the Uniform Commercial Code, and this Act.

24 (5) Requires the manufacturer, when the process
25 orders, under the terms of this Act, either that the
26 nonconforming new motor vehicle or motor home be replaced

1 if the buyer consents to this remedy or that restitution
2 be made to the buyer, to replace the new motor vehicle or
3 motor home or make restitution in accordance with Section
4 5.

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

11 (7) Takes into account, in rendering decisions, all
12 legal and equitable factors, including, but not limited
13 to, the written warranty, the rights and remedies
14 conferred in regulations of the Federal Trade Commission
15 contained in Part 703 of Title 16 of the Code of Federal
16 Regulations as those regulations read on January 1, 1987,
17 Article 2 of the Uniform Commercial Code, this Act, and
18 any other equitable considerations appropriate in the
19 circumstances. Nothing in this Act requires that, to be
20 certified as a qualified third-party dispute resolution
21 process pursuant to this Section, decisions of the process
22 must consider or provide remedies in the form of awards of
23 punitive damages or multiple damages, under subsection (c)
24 of Section 30, or of attorney's fees under subsection (d)
25 of Section 30, or of consequential damages other than as
26 provided in subsections (a) and (b) of Section 30,

1 including, but not limited to, reasonable repair, towing,
2 and rental car costs actually incurred by the buyer.

3 (8) Requires that no arbitrator deciding a dispute may
4 be a party to the dispute and that no other person,
5 including an employee, agent, or dealer for the
6 manufacturer, may be allowed to participate substantively
7 in the merits of any dispute with the arbitrator unless
8 the buyer is allowed to participate as well. Nothing in
9 this subsection prohibits any member of an arbitration
10 from deciding a dispute.

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

13 (d) (1) Except as provided in paragraph (2), no person
14 shall sell, either at wholesale or retail, lease, or transfer
15 a new motor vehicle or motor home transferred by a buyer or
16 lessee to a manufacturer pursuant to Section 5 or a similar
17 statute of any other state, unless the nature of the
18 nonconformity experienced by the original buyer or lessee is
19 clearly and conspicuously disclosed to the prospective buyer,
20 lessee, or transferee, the nonconformity is corrected, and the
21 manufacturer warrants to the new buyer, lessee, or transferee
22 in writing for a period of one year that the new motor vehicle
23 or motor home is free of that nonconformity.

24 (2) Except for the requirement that the nature of the
25 nonconformity be disclosed to the transferee, paragraph (1)
26 does not apply to the transfer of a new motor vehicle or motor

1 home to an educational institution if the purpose of the
2 transfer is to make the new motor vehicle or motor home
3 available for use in automotive repair courses.

4 Section 15. Automotive consumer notification.

5 (a) The General Assembly finds and declares all of the
6 following:

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

10 (2) That, in states without this valuable warranty
11 protection, used and new motor vehicles and motor homes
12 are being resold in the marketplace without notice to the
13 subsequent purchaser.

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

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

1 (5) That the disappearance of these notices upon the
2 transfer of title from another state to this State
3 encourages the transport of "lemons" to this State for
4 sale to the drivers of this State.

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

12 (c) Any manufacturer who reacquires or assists a dealer or
13 lienholder to reacquire a new motor vehicle or motor home
14 registered in this State, any other state, or a federally
15 administered district shall, prior to any sale, lease, or
16 transfer of the new motor vehicle or motor home in this State,
17 or prior to exporting the new motor vehicle or motor home to
18 another state for sale, lease, or transfer if the new motor
19 vehicle or motor home was registered in this State and
20 reacquired pursuant to Section 5, cause the new motor vehicle
21 or motor home to be retitled in the name of the manufacturer,
22 request the Secretary of State to inscribe the manufacturer's
23 certificate of title with the notation "Lemon Law Buyback",
24 and affix a decal to the new motor vehicle or motor home in
25 accordance with Section 25 if the manufacturer knew or should
26 have known that the new motor vehicle or motor home is required

1 by law to be replaced, accepted for restitution due to the
2 failure of the manufacturer to conform the new motor vehicle
3 or motor home to applicable written warranties pursuant to
4 Section 5, or accepted for restitution by the manufacturer due
5 to the failure of the manufacturer to conform the new motor
6 vehicle or motor home to written warranties required by any
7 other applicable law of the State, any other state, or federal
8 law.

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

19 (e) Any person, including any dealer, who acquires a new
20 motor vehicle or motor home for resale and knows or should have
21 known that the new motor vehicle or motor home was reacquired
22 by the manufacturer of the new motor vehicle or motor home in
23 response to a request by the last retail owner or lessee of the
24 new motor vehicle or motor home that it be replaced or accepted
25 for restitution because the new motor vehicle or motor home
26 did not conform to written warranties shall, prior to the

1 sale, lease, or other transfer, execute and deliver to the
2 subsequent transferee a notice and obtain the transferee's
3 written acknowledgment of a notice, as prescribed by Section
4 20.

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

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

24 Section 20. Warranty buyback notice.

25 (a) The notice required in subsections (d) and (e) of

1 Section 15 shall be prepared by the manufacturer of the
2 reacquired new motor vehicle a motor home and shall disclose
3 all of the following:

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

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

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

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

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

19 WARRANTY BUYBACK NOTICE

20 (Check One)

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

24 /. . ./ THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO
25 A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS.

1 THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH
 2 THE NOTATION "LEMON LAW BUYBACK." Under Illinois law, the
 3 manufacturer must warrant to you, for a one-year period, that
 4 the vehicle is free of the problem(s) listed below.

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

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

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

7 Section 25. Lemon decal.

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

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

22 Section 30. Remedies.

23 (a) Any buyer of consumer goods who is damaged by a failure
24 to comply with any obligation under this Act or under an

1 implied or written warranty or service contract may bring an
2 action for the recovery of damages and other legal and
3 equitable relief.

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

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

12 (2) Where the buyer has accepted the goods, Sections
13 2-714 and 2-715 of the Uniform Commercial Code shall
14 apply, and the measure of damages shall include the cost
15 of repairs necessary to make the goods conform.

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

23 (d) If the buyer prevails in an action under this Section,
24 including before a qualified third-party dispute resolution
25 process, the buyer shall be allowed by the court to recover as
26 part of the judgment a sum equal to the aggregate amount of

1 costs and expenses, including attorney's fees based on actual
2 time expended, determined by the court to have been reasonably
3 incurred by the buyer in connection with the commencement and
4 prosecution of such action.

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

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

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

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

24 (5) If the buyer recovers a civil penalty under subsection
25 (c), the buyer may not also recover a civil penalty under this
26 subsection for the same violation.

1 Section 35. Third-party dispute resolution process
2 certification program; fund.

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

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

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

14 (3) Prescribe the information which each manufacturer,
15 or other entity, that operates a third-party dispute
16 resolution process shall provide the Attorney General in
17 the application for certification. In prescribing the
18 information to accompany the application for
19 certification, the Attorney General shall require the
20 manufacturer, or other entity, to provide only that
21 information which the Attorney General finds is reasonably
22 necessary to enable the Attorney General to determine
23 whether the third-party dispute resolution process is in
24 substantial compliance with subsection (c) of Section 10.

25 (4) Prescribe the information that each qualified

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

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

25 (2) The Attorney General shall review the application and
26 accompanying information and, after conducting an onsite

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

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

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

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

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

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

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

1 (1) Establish procedures to assist owners or lessees
2 of new motor vehicles or motor homes who have complaints
3 regarding the operation of a qualified third-party dispute
4 resolution process.

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

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

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

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

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

25 (5) Submit a biennial report to the General Assembly
26 evaluating the effectiveness of this Section, make

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

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

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

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

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

1 be carried forward into the succeeding fiscal year.

2 (2) Beginning July 1, 2022, and on or before May 1 of
3 each calendar year thereafter, every manufacturer shall
4 file with the Secretary of State a statement of the number
5 of new motor vehicles and motor homes sold, leased, or
6 otherwise distributed by or for the manufacturer in this
7 State during the preceding calendar year, and shall, upon
8 written notice delivered to the manufacturer by certified
9 mail, return receipt requested, pay to the Secretary of
10 State a fee, not to exceed \$1 for each new motor vehicle or
11 motor home sold, leased, or distributed by or for the
12 manufacturer in this State during the preceding calendar
13 year. The total fee paid by each manufacturer shall be
14 rounded to the nearest dollar. Not more than \$1 shall be
15 charged, collected, or received from any one or more
16 manufacturers pursuant to this subsection with respect to
17 the same new motor vehicle or motor home.

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

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

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

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

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

25 Section 40. Sales and use tax reimbursement.

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

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

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

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

25 (b) The Department of Revenue may adopt rules and
26 regulations to carry out, facilitate compliance with, or

1 prevent circumvention or evasion of this Section.

2 (c) This Section shall not change the application of the
3 sales and use tax to the gross receipts, the rentals payable,
4 and the sales price from the sale, lease, and the storage, use,
5 or other consumption, in this State, of tangible personal
6 property pursuant to the Retailers' Occupation Tax Act, the
7 Use Tax Act, the Service Occupation Tax Act, or the Service Use
8 Tax Act.

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

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

24 Section 45. Prohibitions.

25 (a) Any automobile manufacturer, importer, distributor,

1 dealer, or lienholder who reacquires, or who assists in
2 reacquiring, a new motor vehicle or motor home, whether by
3 judgment, decree, arbitration award, settlement agreement, or
4 voluntary agreement, is prohibited from doing either of the
5 following:

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

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

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

26 (c) Nothing in this Section is intended to prevent any

1 confidentiality clause, gag clause, or similar clause
2 regarding the financial terms of the reacquisition of the new
3 motor vehicle or motor home.

4 Section 900. The State Finance Act is amended by adding
5 Section 5.935 as follows:

6 (30 ILCS 105/5.935 new)

7 Sec. 5.935. The Motor Vehicle Dispute Resolution
8 Certification Fund.

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

11 (35 ILCS 120/6) (from Ch. 120, par. 445)

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

1 retailer accepts the return of that new motor vehicle or motor
2 home automobile and refunds to the purchaser the selling price
3 of that new motor vehicle or motor home as provided in the New
4 Vehicle Buyer Protection Act of 2021. When a new motor vehicle
5 or motor home is returned for a refund of the purchase price
6 under the New Vehicle Buyer Protection Act of 2021, the
7 Department shall issue a credit memorandum or a refund for the
8 amount of tax paid by the retailer under this Act attributable
9 to the initial sale of that new motor vehicle or motor home.
10 Claims submitted by the retailer are subject to the same
11 restrictions and procedures provided for in this Act. If it is
12 determined that the Department should issue a credit
13 memorandum or refund, the Department may first apply the
14 amount thereof against any tax or penalty or interest due or to
15 become due under this Act or under the Use Tax Act, the Service
16 Occupation Tax Act, the Service Use Tax Act, any local
17 occupation or use tax administered by the Department, Section
18 4 of the Water Commission Act of 1985, subsections (b), (c) and
19 (d) of Section 5.01 of the Local Mass Transit District Act, or
20 subsections (e), (f) and (g) of Section 4.03 of the Regional
21 Transportation Authority Act, from the person who made the
22 erroneous payment. If no tax or penalty or interest is due and
23 no proceeding is pending to determine whether such person is
24 indebted to the Department for tax or penalty or interest, the
25 credit memorandum or refund shall be issued to the claimant;
26 or (in the case of a credit memorandum) the credit memorandum

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

1 any time prior to the expiration of the period agreed upon.

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

1 may be allowed or refund made for any amount paid by or
2 collected from any claimant unless it appears that the
3 claimant has unconditionally repaid, to the purchaser, any
4 amount collected from the purchaser and retained by the
5 claimant with respect to the same transaction under the Use
6 Tax Act.

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

10 In case the Department determines that the claimant is
11 entitled to a refund, such refund shall be made only from the
12 Aviation Fuel Sales Tax Refund Fund or from such appropriation
13 as may be available for that purpose, as appropriate. If it
14 appears unlikely that the amount available would permit
15 everyone having a claim allowed during the period covered by
16 such appropriation or from the Aviation Fuel Sales Tax Refund
17 Fund, as appropriate, to elect to receive a cash refund, the
18 Department, by rule or regulation, shall provide for the
19 payment of refunds in hardship cases and shall define what
20 types of cases qualify as hardship cases.

21 If a retailer who has failed to pay retailers' occupation
22 tax on gross receipts from retail sales is required by the
23 Department to pay such tax, such retailer, without filing any
24 formal claim with the Department, shall be allowed to take
25 credit against such retailers' occupation tax liability to the
26 extent, if any, to which such retailer has paid an amount

1 equivalent to retailers' occupation tax or has paid use tax in
2 error to his or her vendor or vendors of the same tangible
3 personal property which such retailer bought for resale and
4 did not first use before selling it, and no penalty or interest
5 shall be charged to such retailer on the amount of such credit.
6 However, when such credit is allowed to the retailer by the
7 Department, the vendor is precluded from refunding any of that
8 tax to the retailer and filing a claim for credit or refund
9 with respect thereto with the Department. The provisions of
10 this amendatory Act shall be applied retroactively, regardless
11 of the date of the transaction.

12 (Source: P.A. 101-10, eff. 6-5-19.)

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

15 (625 ILCS 5/5-104.2)

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

17 (a) Every manufacturer shall be prohibited from reselling
18 any new motor vehicle or motor home that has been finally
19 ordered, determined, or adjudicated as having a nonconformity
20 under the New Vehicle Buyer Protection Act, the New Vehicle
21 Buyer Protection Act of 2021, or a similar law of any state,
22 territory, or country, and that the manufacturer repurchased
23 or replaced because of the nonconformity, unless the
24 manufacturer has corrected the nonconformity and issues a

1 disclosure statement prior to resale stating that the new
2 motor vehicle or motor home was repurchased or replaced under
3 the New Vehicle Buyer Protection Act, the New Vehicle Buyer
4 Protection Act of 2021, or similar law of any other state,
5 territory, or country; identifying the nonconformity; and
6 warranting that the nonconformity has been corrected. The
7 disclosure statement must accompany the new motor vehicle or
8 motor home through the first retail purchase.

9 (b) "Nonconformity" refers to a new motor vehicle's or
10 motor home's failure to conform to all written express
11 warranties applicable to the new motor vehicle or motor home,
12 which failure substantially impairs the use, market value, or
13 safety of the new motor vehicle or motor home.

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

16 "IMPORTANT

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

1 numbered lines shall be provided to describe the
2 nonconformity or nonconformities)."

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

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

6 (815 ILCS 380/Act rep.)

7 Section 915. The New Vehicle Buyer Protection Act is
8 repealed.