

# SB1755



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1755

Introduced 2/19/2009, by Sen. J. Bradley Burzynski

#### SYNOPSIS AS INTRODUCED:

815 ILCS 710/4

from Ch. 121 1/2, par. 754

Amends the Motor Vehicle Franchise Act. Makes a technical change in a Section concerning unfair competition and practices.

LRB096 11263 WGH 21679 b

A BILL FOR

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

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

7 Sec. 4. Unfair competition and practices.

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

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

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

1 or attempt to coerce, any motor vehicle dealer:

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

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

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

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

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

1 same to be arbitrary or capricious;

2 (2) to fail or refuse to advise or disclose to any  
3 motor vehicle dealer having a franchise or selling  
4 agreement, upon written request therefor, the basis upon  
5 which new motor vehicles of the same line make are  
6 allocated or distributed to motor vehicle dealers in the  
7 State and the basis upon which the current allocation or  
8 distribution is being made or will be made to such motor  
9 vehicle dealer;

10 (3) to refuse to deliver in reasonable quantities and  
11 within a reasonable time after receipt of dealer's order,  
12 to any motor vehicle dealer having a franchise or selling  
13 agreement for the retail sale of new motor vehicles sold or  
14 distributed by such manufacturer, distributor, wholesaler,  
15 distributor branch or division, factory branch or division  
16 or wholesale branch or division, any such motor vehicles as  
17 are covered by such franchise or selling agreement  
18 specifically publicly advertised in the State by such  
19 manufacturer, distributor, wholesaler, distributor branch  
20 or division, factory branch or division, or wholesale  
21 branch or division to be available for immediate delivery.  
22 However, the failure to deliver any motor vehicle shall not  
23 be considered a violation of this Act if such failure is  
24 due to an act of God, a work stoppage or delay due to a  
25 strike or labor difficulty, a shortage of materials, a lack  
26 of manufacturing capacity, a freight embargo or other cause

1 over which the manufacturer, distributor, or wholesaler,  
2 or any agent thereof has no control;

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

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

24 (6) to cancel or terminate the franchise or selling  
25 agreement of a motor vehicle dealer without good cause and  
26 without giving notice as hereinafter provided; to fail or

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

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

23 (i) the business operations of the franchisee  
24 have been abandoned or the franchisee has failed to  
25 conduct customary sales and service operations  
26 during customary business hours for at least 7

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

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

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

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

1 expiration of the franchise or selling agreement. Each  
2 notice of proposed action shall include a detailed  
3 statement setting forth the specific grounds for the  
4 proposed action and shall state that the dealer has  
5 only 30 days from receipt of the notice to file with  
6 the Motor Vehicle Review Board a written protest  
7 against the proposed action.

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

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

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



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

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

20 Good cause shall exist to cancel, terminate or fail  
21 to offer a renewal or replacement franchise or selling  
22 agreement to all franchisees of a line make if the  
23 manufacturer permanently discontinues the manufacture  
24 or assembly of motor vehicles of such line make.

25 (E) The manufacturer may not cancel or terminate,  
26 or fail to extend or renew a franchise or selling

1 agreement or change or modify the obligations of the  
2 franchisee as a condition to offering a renewal,  
3 replacement, or succeeding franchise or selling  
4 agreement before the hearing process is concluded as  
5 prescribed by this Act, and thereafter, if the Board  
6 determines that the manufacturer has failed to meet its  
7 burden of proof and that good cause does not exist to  
8 allow the proposed action; or

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

1 claim, or lawsuit within 60 days after the filing.

2 (e) It shall be deemed a violation for a manufacturer, a  
3 distributor, a wholesaler, a distributor branch or division or  
4 officer, agent or other representative thereof:

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

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

24 (3) to offer to sell or lease, or to sell or lease, any  
25 new motor vehicle to any person, except a wholesaler,  
26 distributor or manufacturer's employees at a lower actual

1 price therefor than the actual price offered and charged to  
2 a motor vehicle dealer for the same model vehicle similarly  
3 equipped or to utilize any device which results in such  
4 lesser actual price. However, the provisions of this  
5 paragraph shall not apply to sales to a motor vehicle  
6 dealer for resale to any unit of the United States  
7 Government, the State or any of its political subdivisions;

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

1 management control of the franchisee shall be deemed  
2 accepted as proposed by the franchisee, and the  
3 manufacturer shall give immediate effect to such change;

4 (5) to prevent or attempt to prevent by contract or  
5 otherwise any motor vehicle dealer from establishing or  
6 changing the capital structure of his dealership or the  
7 means by or through which he finances the operation  
8 thereof; provided the dealer meets any reasonable capital  
9 standards agreed to between the dealer and the  
10 manufacturer, distributor or wholesaler, who may require  
11 that the sources, method and manner by which the dealer  
12 finances or intends to finance its operation, equipment or  
13 facilities be fully disclosed;

14 (6) to refuse to give effect to or prevent or attempt  
15 to prevent by contract or otherwise any motor vehicle  
16 dealer or any officer, partner or stockholder of any motor  
17 vehicle dealer from selling or transferring any part of the  
18 interest of any of them to any other person or persons or  
19 party or parties unless such sale or transfer is to a  
20 transferee who would not otherwise qualify for a new motor  
21 vehicle dealers license under "The Illinois Vehicle Code"  
22 or unless the franchiser, having the burden of proof,  
23 proves that such sale or transfer is to a person or party  
24 who is not of good moral character or does not meet the  
25 franchiser's existing and reasonable capital standards  
26 and, with consideration given to the volume of sales and

1 service of the dealership, uniformly applied minimum  
2 business experience standards in the market area. However,  
3 nothing herein shall be construed to prevent a franchiser  
4 from implementing affirmative action programs providing  
5 business opportunities for minorities or from complying  
6 with applicable federal, State or local law:

7 (A) If the manufacturer intends to refuse to  
8 approve the sale or transfer of all or a part of the  
9 interest, then it shall, within 60 days from receipt of  
10 the completed application forms generally utilized by  
11 a manufacturer to conduct its review and a copy of all  
12 agreements regarding the proposed transfer, send a  
13 letter by certified mail, return receipt requested,  
14 advising the franchisee of any refusal to approve the  
15 sale or transfer of all or part of the interest and  
16 shall state that the dealer only has 30 days from the  
17 receipt of the notice to file with the Motor Vehicle  
18 Review Board a written protest against the proposed  
19 action. The notice shall set forth specific criteria  
20 used to evaluate the prospective transferee and the  
21 grounds for refusing to approve the sale or transfer to  
22 that transferee. Within 30 days from the franchisee's  
23 receipt of the manufacturer's notice, the franchisee  
24 may file with the Board a written protest against the  
25 proposed action.

26 When a protest has been timely filed, the Board

1 shall enter an order, fixing the date (within 60 days  
2 of the date of such order), time, and place of a  
3 hearing on the protest, required under Sections 12 and  
4 29 of this Act, and send by certified mail, return  
5 receipt requested, a copy of the order to the  
6 manufacturer that filed notice of intention of the  
7 proposed action and to the protesting franchisee.

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

22 (B) Good cause to refuse to approve such sale or  
23 transfer under this Section is established when such  
24 sale or transfer is to a transferee who would not  
25 otherwise qualify for a new motor vehicle dealers  
26 license under "The Illinois Vehicle Code" or such sale

1           or transfer is to a person or party who is not of good  
2           moral character or does not meet the franchiser's  
3           existing and reasonable capital standards and, with  
4           consideration given to the volume of sales and service  
5           of the dealership, uniformly applied minimum business  
6           experience standards in the market area.

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

14          (8) to grant an additional franchise in the relevant  
15          market area of an existing franchise of the same line make  
16          or to relocate an existing motor vehicle dealership within  
17          or into a relevant market area of an existing franchise of  
18          the same line make. However, if the manufacturer wishes to  
19          grant such an additional franchise to an independent person  
20          in a bona fide relationship in which such person is  
21          prepared to make a significant investment subject to loss  
22          in such a dealership, or if the manufacturer wishes to  
23          relocate an existing motor vehicle dealership, then the  
24          manufacturer shall send a letter by certified mail, return  
25          receipt requested, to each existing dealer or dealers of  
26          the same line make whose relevant market area includes the



1 proposed location of the additional or relocated franchise  
2 at least 60 days before the manufacturer grants an  
3 additional franchise or relocates an existing franchise of  
4 the same line make within or into the relevant market area  
5 of an existing franchisee of the same line make. Each  
6 notice shall set forth the specific grounds for the  
7 proposed grant of an additional or relocation of an  
8 existing franchise and shall state that the dealer has only  
9 30 days from the date of receipt of the notice to file with  
10 the Motor Vehicle Review Board a written protest against  
11 the proposed action. Unless the parties agree upon the  
12 grant or establishment of the additional or relocated  
13 franchise within 30 days from the date the notice was  
14 received by the existing franchisee of the same line make  
15 or any person entitled to receive such notice, the  
16 franchisee or other person may file with the Board a  
17 written protest against the grant or establishment of the  
18 proposed additional or relocated franchise.

19 When a protest has been timely filed, the Board shall  
20 enter an order fixing a date (within 60 days of the date of  
21 the order), time, and place of a hearing on the protest,  
22 required under Sections 12 and 29 of this Act, and send by  
23 certified or registered mail, return receipt requested, a  
24 copy of the order to the manufacturer that filed the notice  
25 of intention to grant or establish the proposed additional  
26 or relocated franchise and to the protesting dealer or

1 dealers of the same line make whose relevant market area  
2 includes the proposed location of the additional or  
3 relocated franchise.

4 When more than one protest is filed against the grant  
5 or establishment of the additional or relocated franchise  
6 of the same line make, the Board may consolidate the  
7 hearings to expedite disposition of the matter. The  
8 manufacturer shall have the burden of proof to establish  
9 that good cause exists to allow the grant or establishment  
10 of the additional or relocated franchise. The manufacturer  
11 may not grant or establish the additional franchise or  
12 relocate the existing franchise before the hearing process  
13 is concluded as prescribed by this Act, and thereafter if  
14 the Board determines that the manufacturer has failed to  
15 meet its burden of proof and that good cause does not exist  
16 to allow the grant or establishment of the additional  
17 franchise or relocation of the existing franchise.

18 The determination whether good cause exists for  
19 allowing the grant or establishment of an additional  
20 franchise or relocated existing franchise, shall be made by  
21 the Board under subsection (c) of Section 12 of this Act.  
22 If the manufacturer seeks to enter into a contract,  
23 agreement or other arrangement with any person,  
24 establishing any additional motor vehicle dealership or  
25 other facility, limited to the sale of factory repurchase  
26 vehicles or late model vehicles, then the manufacturer

1 shall follow the notice procedures set forth in this  
2 Section and the determination whether good cause exists for  
3 allowing the proposed agreement shall be made by the Board  
4 under subsection (c) of Section 12, with the manufacturer  
5 having the burden of proof.

6 A. (Blank).

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

19 C. This Section does not apply to the relocation of  
20 an existing dealership or franchise in a county having  
21 a population of more than 300,000 persons when the new  
22 location is within the dealer's current relevant  
23 market area, provided the new location is more than 7  
24 miles from the nearest dealer of the same line make.  
25 This Section does not apply to the relocation of an  
26 existing dealership or franchise in a county having a

1 population of less than 300,000 persons when the new  
2 location is within the dealer's current relevant  
3 market area, provided the new location is more than 12  
4 miles from the nearest dealer of the same line make. A  
5 dealer that would be farther away from the new location  
6 of an existing dealership or franchise of the same line  
7 make after a relocation may not file a written protest  
8 against the relocation with the Motor Vehicle Review  
9 Board.

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

15 (9) to require a motor vehicle dealer to assent to a  
16 release, assignment, novation, waiver or estoppel which  
17 would relieve any person from liability imposed by this  
18 Act;

19 (10) to prevent or refuse to give effect to the  
20 succession to the ownership or management control of a  
21 dealership by any legatee under the will of a dealer or to  
22 an heir under the laws of descent and distribution of this  
23 State unless the franchisee has designated a successor to  
24 the ownership or management control under the succession  
25 provisions of the franchise. Unless the franchiser, having  
26 the burden of proof, proves that the successor is a person

1           who is not of good moral character or does not meet the  
2           franchiser's existing and reasonable capital standards  
3           and, with consideration given to the volume of sales and  
4           service of the dealership, uniformly applied minimum  
5           business experience standards in the market area, any  
6           designated successor of a dealer or franchisee may succeed  
7           to the ownership or management control of a dealership  
8           under the existing franchise if:

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

14                   (ii) The designated successor agrees to be  
15                   bound by all the terms and conditions of the  
16                   existing franchise.

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

22                   (A) If the franchiser intends to refuse to honor  
23                   the successor to the ownership of a deceased or  
24                   incapacitated dealer or franchisee under an existing  
25                   franchise agreement, the franchiser shall send a  
26                   letter by certified mail, return receipt requested, to

1 the designated successor within 60 days from receipt of  
2 a proposal advising of its intent to refuse to honor  
3 the succession and to discontinue the existing  
4 franchise agreement and shall state that the  
5 designated successor only has 30 days from the receipt  
6 of the notice to file with the Motor Vehicle Review  
7 Board a written protest against the proposed action.  
8 The notice shall set forth the specific grounds for the  
9 refusal to honor the succession and discontinue the  
10 existing franchise agreement.

11 If notice of refusal is not timely served upon the  
12 designated successor, the franchise agreement shall  
13 continue in effect subject to termination only as  
14 otherwise permitted by paragraph (6) of subsection (d)  
15 of Section 4 of this Act.

16 Within 30 days from the date the notice was  
17 received by the designated successor or any other  
18 person entitled to notice, the designee or other person  
19 may file with the Board a written protest against the  
20 proposed action.

21 When a protest has been timely filed, the Board  
22 shall enter an order, fixing a date (within 60 days of  
23 the date of the order), time, and place of a hearing on  
24 the protest, required under Sections 12 and 29 of this  
25 Act, and send by certified mail, return receipt  
26 requested, a copy of the order to the franchiser that

1 filed the notice of intention of the proposed action  
2 and to the protesting designee or such other person.

3 The manufacturer shall have the burden of proof to  
4 establish that good cause exists to refuse to honor the  
5 succession and discontinue the existing franchise  
6 agreement. The determination whether good cause exists  
7 to refuse to honor the succession shall be made by the  
8 Board under subdivision (B) of this paragraph (10). The  
9 manufacturer shall not refuse to honor the succession  
10 or discontinue the existing franchise agreement before  
11 the hearing process is concluded as prescribed by this  
12 Act, and thereafter if the Board determines that it has  
13 failed to meet its burden of proof and that good cause  
14 does not exist to refuse to honor the succession and  
15 discontinue the existing franchise agreement.

16 (B) No manufacturer shall impose any conditions  
17 upon honoring the succession and continuing the  
18 existing franchise agreement with the designated  
19 successor other than that the franchisee has  
20 designated a successor to the ownership or management  
21 control under the succession provisions of the  
22 franchise, or that the designated successor is of good  
23 moral character or meets the reasonable capital  
24 standards and, with consideration given to the volume  
25 of sales and service of the dealership, uniformly  
26 applied minimum business experience standards in the

1 market area;

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

22 (12) to prevent or refuse to grant a franchise to a  
23 person because such person owns, has investment in or  
24 participates in the management of or holds a franchise for  
25 the sale of another make or line of motor vehicles within 7  
26 miles of the proposed franchise location in a county having



1 a population of more than 300,000 persons, or within 12  
2 miles of the proposed franchise location in a county having  
3 a population of less than 300,000 persons; or

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

13 (f) It is deemed a violation for a manufacturer, a  
14 distributor, a wholesale, a distributor branch or division, a  
15 factory branch or division, or a wholesale branch or division,  
16 or officer, agent, broker, shareholder, except a shareholder of  
17 1% or less of the outstanding shares of any class of securities  
18 of a manufacturer, distributor, or wholesaler which is a  
19 publicly traded corporation, or other representative, directly  
20 or indirectly, to own or operate a place of business as a motor  
21 vehicle franchisee or motor vehicle financing affiliate,  
22 except that, this subsection shall not prohibit the ownership  
23 or operation of a place of business by a manufacturer,  
24 distributor, or wholesaler for a period, not to exceed 18  
25 months, during the transition from one motor vehicle franchisee  
26 to another; or the investment in a motor vehicle franchisee by

1 a manufacturer, distributor, or wholesaler if the investment is  
2 for the sole purpose of enabling a partner or shareholder in  
3 that motor vehicle franchisee to acquire an interest in that  
4 motor vehicle franchisee and that partner or shareholder is not  
5 otherwise employed by or associated with the manufacturer,  
6 distributor, or wholesaler and would not otherwise have the  
7 requisite capital investment funds to invest in the motor  
8 vehicle franchisee, and has the right to purchase the entire  
9 equity interest of the manufacturer, distributor, or  
10 wholesaler in the motor vehicle franchisee within a reasonable  
11 period of time not to exceed 5 years.

12 (Source: P.A. 94-287, eff. 1-1-06.)