



Rep. Dan Brady

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1 AMENDMENT TO SENATE BILL 140

2 AMENDMENT NO. _____. Amend Senate Bill 140 by replacing
3 everything after the enacting clause with the following:

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 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

1 motor vehicle dealer to engage in any action with respect to a
2 franchise which is arbitrary, in bad faith or unconscionable
3 and which causes damage to any of the parties or to the public.

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

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

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

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

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

4 (1) to adopt, change, establish or implement a plan or
5 system for the allocation and distribution of new motor
6 vehicles to motor vehicle dealers which is arbitrary or
7 capricious or to modify an existing plan so as to cause the
8 same to be arbitrary or capricious;

9 (2) to fail or refuse to advise or disclose to any
10 motor vehicle dealer having a franchise or selling
11 agreement, upon written request therefor, the basis upon
12 which new motor vehicles of the same line make are
13 allocated or distributed to motor vehicle dealers in the
14 State and the basis upon which the current allocation or
15 distribution is being made or will be made to such motor
16 vehicle dealer;

17 (3) to refuse to deliver in reasonable quantities and
18 within a reasonable time after receipt of dealer's order,
19 to any motor vehicle dealer having a franchise or selling
20 agreement for the retail sale of new motor vehicles sold or
21 distributed by such manufacturer, distributor, wholesaler,
22 distributor branch or division, factory branch or division
23 or wholesale branch or division, any such motor vehicles as
24 are covered by such franchise or selling agreement
25 specifically publicly advertised in the State by such
26 manufacturer, distributor, wholesaler, distributor branch

1 or division, factory branch or division, or wholesale
2 branch or division to be available for immediate delivery.
3 However, the failure to deliver any motor vehicle shall not
4 be considered a violation of this Act if such failure is
5 due to an act of God, a work stoppage or delay due to a
6 strike or labor difficulty, a shortage of materials, a lack
7 of manufacturing capacity, a freight embargo or other cause
8 over which the manufacturer, distributor, or wholesaler,
9 or any agent thereof has no control;

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

26 (5) to require a franchisee to participate in an

1 advertising campaign or contest or any promotional
2 campaign, or to purchase or lease any promotional
3 materials, training materials, show room or other display
4 decorations or materials at the expense of the franchisee;

5 (6) to cancel or terminate the franchise or selling
6 agreement of a motor vehicle dealer without good cause and
7 without giving notice as hereinafter provided; to fail or
8 refuse to extend the franchise or selling agreement of a
9 motor vehicle dealer upon its expiration without good cause
10 and without giving notice as hereinafter provided; or, to
11 offer a renewal, replacement or succeeding franchise or
12 selling agreement containing terms and provisions the
13 effect of which is to substantially change or modify the
14 sales and service obligations or capital requirements of
15 the motor vehicle dealer arbitrarily and without good cause
16 and without giving notice as hereinafter provided
17 notwithstanding any term or provision of a franchise or
18 selling agreement.

19 (A) If a manufacturer, distributor, wholesaler,
20 distributor branch or division, factory branch or
21 division or wholesale branch or division intends to
22 cancel or terminate a franchise or selling agreement or
23 intends not to extend or renew a franchise or selling
24 agreement on its expiration, it shall send a letter by
25 certified mail, return receipt requested, to the
26 affected franchisee at least 60 days before the

1 effective date of the proposed action, or not later
2 than 10 days before the proposed action when the reason
3 for the action is based upon either of the following:

4 (i) the business operations of the franchisee
5 have been abandoned or the franchisee has failed to
6 conduct customary sales and service operations
7 during customary business hours for at least 7
8 consecutive business days unless such closing is
9 due to an act of God, strike or labor difficulty or
10 other cause over which the franchisee has no
11 control; or

12 (ii) the conviction of or plea of nolo
13 contendere by the motor vehicle dealer or any
14 operator thereof in a court of competent
15 jurisdiction to an offense punishable by
16 imprisonment for more than two years.

17 Each notice of proposed action shall include a
18 detailed statement setting forth the specific grounds
19 for the proposed cancellation, termination, or refusal
20 to extend or renew and shall state that the dealer has
21 only 30 days from receipt of the notice to file with
22 the Motor Vehicle Review Board a written protest
23 against the proposed action.

24 (B) If a manufacturer, distributor, wholesaler,
25 distributor branch or division, factory branch or
26 division or wholesale branch or division intends to

1 change substantially or modify the sales and service
2 obligations or capital requirements of a motor vehicle
3 dealer as a condition to extending or renewing the
4 existing franchise or selling agreement of such motor
5 vehicle dealer, it shall send a letter by certified
6 mail, return receipt requested, to the affected
7 franchisee at least 60 days before the date of
8 expiration of the franchise or selling agreement. Each
9 notice of proposed action shall include a detailed
10 statement setting forth the specific grounds for the
11 proposed action and shall state that the dealer has
12 only 30 days from receipt of the notice to file with
13 the Motor Vehicle Review Board a written protest
14 against the proposed action.

15 (C) Within 30 days from receipt of the notice under
16 subparagraphs (A) and (B), the franchisee may file with
17 the Board a written protest against the proposed
18 action.

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

1 The manufacturer shall have the burden of proof to
2 establish that good cause exists to cancel or
3 terminate, or fail to extend or renew the franchise or
4 selling agreement of a motor vehicle dealer or
5 franchisee, and to change substantially or modify the
6 sales and service obligations or capital requirements
7 of a motor vehicle dealer as a condition to extending
8 or renewing the existing franchise or selling
9 agreement. The determination whether good cause exists
10 to cancel, terminate, or refuse to renew or extend the
11 franchise or selling agreement, or to change or modify
12 the obligations of the dealer as a condition to offer
13 renewal, replacement, or succession shall be made by
14 the Board under subsection (d) of Section 12 of this
15 Act.

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

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

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

1 that, in order to provide an adequate defense, the
2 manufacturer receives notice of the filing of a complaint,
3 claim, or lawsuit within 60 days after the filing;

4 (8) to require or otherwise coerce a motor vehicle
5 dealer to underutilize the motor vehicle dealer's
6 facilities by requiring or otherwise coercing the motor
7 vehicle dealer to exclude or remove from the motor vehicle
8 dealer's facilities operations for selling or servicing of
9 any vehicles for which the motor vehicle dealer has a
10 franchise agreement with another manufacturer,
11 distributor, wholesaler, distribution branch or division,
12 or officer, agent, or other representative thereof;
13 provided, however, that, in light of all existing
14 circumstances, (i) the motor vehicle dealer maintains a
15 reasonable line of credit for each make or line of new
16 motor vehicle, (ii) the new motor vehicle dealer remains in
17 compliance with any reasonable facilities requirements of
18 the manufacturer, (iii) no change is made in the principal
19 management of the new motor vehicle dealer, and (iv) the
20 addition of the make or line of new motor vehicles would be
21 reasonable. The reasonable facilities requirement set
22 forth in item (ii) of subsection (d)(8) shall not include
23 any requirement that a franchisee establish or maintain
24 exclusive facilities, personnel, or display space. Any
25 decision by a motor vehicle dealer to sell additional makes
26 or lines at the motor vehicle dealer's facility shall be

1 presumed to be reasonable, and the manufacturer shall have
2 the burden to overcome that presumption. A motor vehicle
3 dealer must provide a written notification of its intent to
4 add a make or line of new motor vehicles to the
5 manufacturer. If the manufacturer does not respond to the
6 motor vehicle dealer, in writing, objecting to the addition
7 of the make or line within 60 days after the date that the
8 motor vehicle dealer sends the written notification, then
9 the manufacturer shall be deemed to have approved the
10 addition of the make or line; or

11 (9) to use or consider the performance of a motor
12 vehicle dealer relating to the sale of the manufacturer's,
13 distributor's, or wholesaler's vehicles or the motor
14 vehicle dealer's ability to satisfy any minimum sales or
15 market share quota or responsibility relating to the sale
16 of the manufacturer's, distributor's, or wholesaler's new
17 vehicles in determining:

18 (A) the motor vehicle dealer's eligibility to
19 purchase program, certified, or other used motor
20 vehicles from the manufacturer, distributor, or
21 wholesaler;

22 (B) the volume, type, or model of program,
23 certified, or other used motor vehicles that a motor
24 vehicle dealer is eligible to purchase from the
25 manufacturer, distributor, or wholesaler;

26 (C) the price of any program, certified, or other

1 used motor vehicle that the dealer is eligible to
2 purchase from the manufacturer, distributor, or
3 wholesaler; or

4 (D) the availability or amount of any discount,
5 credit, rebate, or sales incentive that the dealer is
6 eligible to receive from the manufacturer,
7 distributor, or wholesaler for the purchase of any
8 program, certified, or other used motor vehicle
9 offered for sale by the manufacturer, distributor, or
10 wholesaler.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 proposed additional or relocated franchise.

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

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

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

15 A. (Blank).

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

1 additional franchise or selling agreement.

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

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

24 (9) to require a motor vehicle dealer to assent to a
25 release, assignment, novation, waiver or estoppel which
26 would relieve any person from liability imposed by this

1 Act;

2 (10) to prevent or refuse to give effect to the
3 succession to the ownership or management control of a
4 dealership by any legatee under the will of a dealer or to
5 an heir under the laws of descent and distribution of this
6 State unless the franchisee has designated a successor to
7 the ownership or management control under the succession
8 provisions of the franchise. Unless the franchiser, having
9 the burden of proof, proves that the successor is a person
10 who is not of good moral character or does not meet the
11 franchiser's existing and reasonable capital standards
12 and, with consideration given to the volume of sales and
13 service of the dealership, uniformly applied minimum
14 business experience standards in the market area, any
15 designated successor of a dealer or franchisee may succeed
16 to the ownership or management control of a dealership
17 under the existing franchise if:

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

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

26 Notwithstanding the foregoing, in the event the motor

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

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

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

25 Within 30 days from the date the notice was
26 received by the designated successor or any other

1 person entitled to notice, the designee or other person
2 may file with the Board a written protest against the
3 proposed action.

4 When a protest has been timely filed, the Board
5 shall enter an order, fixing a date (within 60 days of
6 the date of the order), time, and place of a hearing on
7 the protest, required under Sections 12 and 29 of this
8 Act, and send by certified mail, return receipt
9 requested, a copy of the order to the franchiser that
10 filed the notice of intention of the proposed action
11 and to the protesting designee or such other person.

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

25 (B) No manufacturer shall impose any conditions
26 upon honoring the succession and continuing the

1 existing franchise agreement with the designated
2 successor other than that the franchisee has
3 designated a successor to the ownership or management
4 control under the succession provisions of the
5 franchise, or that the designated successor is of good
6 moral character or meets the reasonable capital
7 standards and, with consideration given to the volume
8 of sales and service of the dealership, uniformly
9 applied minimum business experience standards in the
10 market area;

11 (11) to prevent or refuse to approve a proposal to
12 establish a successor franchise at a location previously
13 approved by the franchiser when submitted with the
14 voluntary termination by the existing franchisee unless
15 the successor franchisee would not otherwise qualify for a
16 new motor vehicle dealer's license under the Illinois
17 Vehicle Code or unless the franchiser, having the burden of
18 proof, proves that such proposed successor is not of good
19 moral character or does not meet the franchiser's existing
20 and reasonable capital standards and, with consideration
21 given to the volume of sales and service of the dealership,
22 uniformly applied minimum business experience standards in
23 the market area. However, when such a rejection of a
24 proposal is made, the manufacturer shall give written
25 notice of its reasons to the franchisee within 60 days of
26 receipt by the manufacturer of the proposal. However,

1 nothing herein shall be construed to prevent a franchiser
2 from implementing affirmative action programs providing
3 business opportunities for minorities, or from complying
4 with applicable federal, State or local law;

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

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

22 (f) It is deemed a violation for a manufacturer, a
23 distributor, a wholesaler ~~wholesale~~, a distributor branch or
24 division, a factory branch or division, or a wholesale branch
25 or division, or officer, agent, broker, shareholder, except a
26 shareholder of 1% or less of the outstanding shares of any

1 class of securities of a manufacturer, distributor, or
2 wholesaler which is a publicly traded corporation, or other
3 representative, directly or indirectly, to own or operate a
4 place of business as a motor vehicle franchisee or motor
5 vehicle financing affiliate, except that, this subsection
6 shall not prohibit:

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

11 (2) the investment in a motor vehicle franchisee by a
12 manufacturer, distributor, or wholesaler if the investment
13 is for the sole purpose of enabling a partner or
14 shareholder in that motor vehicle franchisee to acquire an
15 interest in that motor vehicle franchisee and that partner
16 or shareholder is not otherwise employed by or associated
17 with the manufacturer, distributor, or wholesaler and
18 would not otherwise have the requisite capital investment
19 funds to invest in the motor vehicle franchisee, and has
20 the right to purchase the entire equity interest of the
21 manufacturer, distributor, or wholesaler in the motor
22 vehicle franchisee within a reasonable period of time not
23 to exceed 5 years; or.

24 (3) the ownership or operation of a place of business
25 by a manufacturer that manufactures only diesel engines for
26 installation in trucks having a gross vehicle weight rating

1 of more than 16,000 pounds that are required to be
2 registered under the Illinois Vehicle Code, provided that:

3 (A) the manufacturer does not otherwise
4 manufacture, distribute, or sell motor vehicles as
5 defined under Section 1-217 of the Illinois Vehicle
6 Code;

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

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

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

24 (E) the manufacturer does not require that
25 warranty repair work be performed by a
26 manufacturer-owned repair facility and the

1 manufacturer provides any dealer that has an agreement
2 with the manufacturer to sell and perform warranty
3 repairs on the manufacturer's engines the opportunity
4 to perform warranty repairs on those engines,
5 regardless of whether the dealer sold the truck into
6 which the engine was installed.

7 (g) Notwithstanding the terms, provisions, or conditions
8 of any agreement or waiver, it shall be deemed a violation for
9 a manufacturer, a distributor, a wholesaler, a distributor
10 branch or division, a factory branch or division, or a
11 wholesale branch or division, or officer, agent or other
12 representative thereof, to directly or indirectly condition
13 the awarding of a franchise to a prospective new motor vehicle
14 dealer, the addition of a line make or franchise to an existing
15 dealer, the renewal of a franchise of an existing dealer, the
16 approval of the relocation of an existing dealer's facility, or
17 the approval of the sale or transfer of the ownership of a
18 franchise on the willingness of a dealer, proposed new dealer,
19 or owner of an interest in the dealership facility to enter
20 into a site control agreement or exclusive use agreement unless
21 separate and reasonable consideration was offered and accepted
22 for that agreement.

23 For purposes of this subsection (g), the terms "site
24 control agreement" and "exclusive use agreement" include any
25 agreement that has the effect of either (i) requiring that the
26 dealer establish or maintain exclusive dealership facilities;

1 or (ii) restricting the ability of the dealer, or the ability
2 of the dealer's lessor in the event the dealership facility is
3 being leased, to transfer, sell, lease, or change the use of
4 the dealership premises, whether by sublease, lease,
5 collateral pledge of lease, or other similar agreement. "Site
6 control agreement" and "exclusive use agreement" also include a
7 manufacturer restricting the ability of a dealer to transfer,
8 sell, or lease the dealership premises by right of first
9 refusal to purchase or lease, option to purchase, or option to
10 lease if the transfer, sale, or lease of the dealership
11 premises is to a person who is an immediate family member of
12 the dealer. For the purposes of this subsection (g), "immediate
13 family member" means a spouse, parent, son, daughter,
14 son-in-law, daughter-in-law, brother, and sister.

15 If a manufacturer exercises any right of first refusal to
16 purchase or lease or option to purchase or lease with regard to
17 a transfer, sale, or lease of the dealership premises to a
18 person who is not an immediate family member of the dealer,
19 then (1) within 60 days from the receipt of the completed
20 application forms generally utilized by a manufacturer to
21 conduct its review and a copy of all agreements regarding the
22 proposed transfer, the manufacturer must notify the dealer of
23 its intent to exercise the right of first refusal to purchase
24 or lease or option to purchase or lease and (2) the exercise of
25 the right of first refusal to purchase or lease or option to
26 purchase or lease must result in the dealer receiving

1 consideration, terms, and conditions that either are the same
2 as or greater than that which they have contracted to receive
3 in connection with the proposed transfer, sale, or lease of the
4 dealership premises.

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

11 (h) For purposes of this subsection:

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

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

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

26 (iii) The discontinuance of the sale of the product

1 line.

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

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

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

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

15 For a period of 3 years from: (i) the date that a successor
16 manufacturer acquires, succeeds to, or assumes any part of the
17 business of a predecessor manufacturer; (ii) the last day that
18 a former franchisee is authorized to remain in business as a
19 franchised dealer with respect to a particular franchise under
20 a termination agreement or deferred termination agreement with
21 a predecessor or successor manufacturer; (iii) the last day
22 that a former franchisee that was cancelled, terminated,
23 nonrenewed, noncontinued, rejected, nonassumed, or otherwise
24 ended by a predecessor or successor manufacturer is authorized
25 to remain in business as a franchised dealer with respect to a
26 particular franchise; or (iv) the effective date of this

1 amendatory Act of the 96th General Assembly, whichever is
2 latest, it shall be unlawful for such successor manufacturer to
3 enter into a same line make franchise with any person or to
4 permit the relocation of any existing same line make franchise,
5 for a line make of the predecessor manufacturer that would be
6 located or relocated within the relevant market area of a
7 former franchisee who owned or leased a dealership facility in
8 that relevant market area without first offering the additional
9 or relocated franchise to the former franchisee, or the
10 designated successor of such former franchisee in the event the
11 former franchisee is deceased or a person with a disability, at
12 no cost and without any requirements or restrictions other than
13 those imposed generally on the manufacturer's other
14 franchisees at that time, unless one of the following applies:

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

22 (2) The successor manufacturer has paid the former
23 franchisee, or the designated successor of such former
24 franchisee in the event the former franchisee is deceased
25 or a person with a disability, the fair market value of the
26 former franchisee's franchise on (i) the date the

1 franchisor announces the action which results in the
2 termination, cancellation, or nonrenewal; or (ii) the date
3 the action which results in termination, cancellation, or
4 nonrenewal first became general knowledge; or (iii) the day
5 12 months prior to the date on which the notice of
6 termination, cancellation, or nonrenewal is issued,
7 whichever amount is higher. Payment is due within 90 days
8 of the effective date of the termination, cancellation, or
9 nonrenewal. If the termination, cancellation, or
10 nonrenewal is due to a manufacturer's change in
11 distributors, the manufacturer may avoid paying fair
12 market value to the dealer if the new distributor or the
13 manufacturer offers the dealer a franchise agreement with
14 terms acceptable to the dealer.

15 (3) The successor manufacturer proves that it would
16 have had good cause to terminate the franchise agreement of
17 the former franchisee, or the successor of the former
18 franchisee under item (e)(10) in the event that the former
19 franchisee is deceased or a person with a disability. The
20 determination of whether the successor manufacturer would
21 have had good cause to terminate the franchise agreement of
22 the former franchisee, or the successor of the former
23 franchisee, shall be made by the Board under subsection (d)
24 of Section 12. A successor manufacturer that seeks to
25 assert that it would have had good cause to terminate a
26 former franchisee, or the successor of the former

1 franchisee, must file a petition seeking a hearing on this
2 issue before the Board and shall have the burden of proving
3 that it would have had good cause to terminate the former
4 franchisee or the successor of the former franchisee. No
5 successor dealer, other than the former franchisee, may be
6 appointed or franchised by the successor manufacturer
7 within the relevant market area of the former franchisee
8 until the Board has held a hearing and rendered a
9 determination on the issue of whether the successor
10 manufacturer would have had good cause to terminate the
11 former franchisee.

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

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

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