815 ILCS 710/1

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/1 Short title.

This Act may be cited as the Motor Vehicle Franchise Act.

History

P.A. 86-1475.

Annotations

Notes

Derivation.

Title: An Act to create “The Motor Vehicle Franchise Act”.

Cite: 815 ILCS 710/1 et seq.

Source: P.A. 81-43.

Date: Approved June 29, 1979.

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 751.

P.A. 89-145, § 15 purported to add a new section 33 to the Motor Vehicle Franchise Act, however no new section 33 was set out.

CASE NOTES

Constitutionality

Application and Construction

—Construction with Former Act

Implied Warranties

Interstate Commerce

Retroactive Application

Violation Not Shown

Constitutionality

Although the Illinois Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq., treated existing automobile dealers differently than other kids of franchise owners, there was no equal protection violation because the classification was related to the legitimate government purpose of redressing the disparity in bargaining power between automobile manufacturers and their existing dealers and of protecting the public from the negative impact of harmful franchise practices by automobile manufacturers. GMC v. State Motor Vehicle Review Bd., 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (Ill. 2007).

Application and Construction

Car manufacturer asked the court to declare that no franchise existed between it and the dealership and that the Illinois Motor Vehicle Review Board (Board) lacked jurisdiction, even though the manufacturer's raised those exact issues as a defense to the dealership's protest filed with the Board; the court held that the Illinois Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq., was created to establish a coherent policy with respect to a matter of substantial public concern, namely automobile franchising practices and, thus, Burford abstention was appropriate and the manufacturer's motion to dismiss was granted. Nissan N. Am., Inc. v. Jim M'Lady Oldsmobile, Inc., No. 07 C 6304, 2008 U.S. Dist. LEXIS 84700 (N.D. Ill. Aug. 29, 2008).

—Construction with Former Act

Although certain provisions of this Act (815 ILCS 710/9, 815 ILCS 710/13, 815 ILCS 710/14) conflicted with provisions of the former Illinois Franchise Disclosure Act (see now 815 ILCS 705/20, 815 ILCS 705/26, and 815 ILCS 705/270), and therefore one pertinent provision of the latter did not apply to automobile dealerships, nothing in this Act purported to govern pre-sale disclosures, nor was there anything in the language of the statute that indicated that that aspect of this Act was no longer applicable to franchises within its scope; therefore, there was no basis for repeal by implication of this Act's disclosure requirements as applied to automobile dealerships. Ford Motor Credit Co. v. Aaron Lincoln-Mercury, Inc., 563 F. Supp. 1118, 1983 U.S. Dist. LEXIS 16383 (N.D. Ill. 1983).

Implied Warranties

Subrogees that sought reimbursement for economic loss sustained by their insureds when a car produced by the manufacturer caught fire could not maintain an action under state law or under the Magnusson-Moss Act 15 U.S.C. § 2301(d) for breach of implied warranties of merchantability and fitness because Illinois state law allowed only such claims between the buyer and the seller, and the manufacturer of the car could not have been the seller, pursuant to the Illinois Franchise Act, 815 ILCS 710/1. Allstate Ins. Co. v. Daimler Chrysler, No. 03 C 6107, 2004 U.S. Dist. LEXIS 3811 (N.D. Ill. Mar. 9, 2004).

Interstate Commerce

Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq., passed muster under the Pike test because any burden the Act placed on interstate commerce was not clearly excessive in relation to the legitimate local benefits. GMC v. State Motor Vehicle Review Bd., 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (Ill. 2007).

Retroactive Application

This Act could not be applied retroactively so as to impair vested contractual rights. Libertyville Datsun Sales, Inc. v. Nissan Motor Corp., 776 F.2d 735, 1985 U.S. App. LEXIS 24567 (7th Cir. Ill. 1985).

Violation Not Shown

Dealer who had a franchise agreement with the manufacturer did not show that the manufacturer engaged in conduct that violated the Illinois Motor Vehicle Franchise Act, 815 ILCS 705/1 et seq., and, thus, the dealer was not entitled to pursue a cause of action pursuant to it against the manufacturer. The manufacturer's eventual location of another dealer 90 miles away did not violate 815 ILCS 710/4(e)(8), requiring notice to be given to dealers, as the franchise agreement did not state the relevant market area for which notice would have to be given, which meant that notice had to be given under 815 ILCS 710/2(q) only if the other dealer was located within a 15-mile radius, and the dealer did not show that the manufacturer engaged in the unfair conduct contemplated in 815 ILCS 710/4(d)(6). Clark Invs., Inc. v. Airstream, Inc., 399 Ill. App. 3d 209, 339 Ill. Dec. 176, 926 N.E.2d 408, 2010 Ill. App. LEXIS 226 (Ill. App. Ct. 3d Dist. 2010).

Research References & Practice Aids

Research References and Practice Aids

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

815 ILCS 710/1.1

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815 ILCS 710/1.1 Declaration of purpose.

The Legislature finds and declares that the distribution and sale of vehicles within this State vitally affects the general economy of the State and the public interest, welfare, and safety and that in order to promote the public interest, welfare, and safety, and in the exercise of its police power, it is necessary to regulate motor vehicle manufacturers, distributors, wholesalers and factory or distributor branches or representatives, and to regulate dealers of motor vehicles doing business in this State in order to prevent frauds, impositions, discrimination, and other abuses upon its citizens, to protect and preserve the investments and properties of the citizens of this State, to foster healthy competition, and to provide adequate and sufficient service to consumers generally. The licensing and supervision of motor vehicle dealers is necessary for the protection of consumers and the sale of motor vehicles by unlicensed dealers shall be prohibited.

The Legislature further finds that the regulation of motor vehicle manufacturers, distributors, wholesalers, factory branches, distributor branches and representatives, and dealers promotes the distribution of motor vehicles to the public and provides a system for servicing vehicles and for complying with manufacturer warranties so that consumers can keep their motor vehicles properly functioning and safe. The sale and distribution of motor vehicles constitutes a continuing obligation of manufacturers, distributors, wholesalers, factory branches, distributor branches and representatives, and dealers to consumers, and the public has an interest in promoting the availability of post-sale mechanical and operational services.

History

P.A. 83-922; 2017 P.A. 100-308, § 5, effective August 24, 2017; 2021 P.A. 102-232, § 5, effective January 1, 2022.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 751.1.

Amendment Notes

The 2017 amendment by P.A. 100-308, effective August 24, 2017, in the first paragraph, in the first sentence, added “safety” twice, “discrimination,” and “to foster healthy competition” and added the second sentence; and added the second paragraph.

The 2021 amendment by P.A. 102-232, effective January 1 2022, substituted “dealers shall be prohibited” for “dealers should be prevented” in the last sentence of the first paragraph.

CASE NOTES

Construction

Considering the plain and unambiguous language of the Illinois Motor Vehicle Franchise Act, its legislative history, and the recently amended 815 ILCS 715/2(4) of the Illinois Equipment Fair Dealership Law, the Illinois Legislature intends 815 ILCS 710/10.1(a) to apply only to motorcycles and off-highway vehicles required to be registered under the Illinois Vehicle Code, 625 ILCS 5/1-100 et seq. Therefore, a dealer was unable to file a protest over a termination letter received from a manufacturer because the all-terrain vehicles and snowmobiles sold by the dealer did not fit within the definition of “motorcycles” in 815 ILCS 710/10.1(a). Scholl's 4 Season Motor Sports, Inc. v. Ill. Motor Vehicle Review Bd., 2011 IL App (1st) 102995, 354 Ill. Dec. 411, 957 N.E.2d 1204, 2011 Ill. App. LEXIS 979 (Ill. App. Ct. 1st Dist. 2011).

This Act has been said to have been created for the benefit of the dealers and must therefore be liberally construed to carry out the legislative intent. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

815 ILCS 710/2

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/2 Definitions.

As used in this Act, the following words shall, unless the context otherwise requires, have the following meanings:

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

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

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

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

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

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

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

(h) "Motor vehicle dealer", any person who, in the ordinary course of business, is engaged in the business of selling new or used motor vehicles to consumers or other end users.

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

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

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

(l) "Sale", shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract or solicitation, looking to a sale, or offer or attempt to sell in any form, whether oral or written. A gift or

delivery of any motor vehicle or franchise with respect thereto with or as a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

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

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

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

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

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

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

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

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

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

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

History

P.A. 87-625; 89-145, § 15; 95-678, § 5; 96-11, § 5; 2017 P.A. 100-308, § 5, effective August 24, 2017.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 752.

Amendment Notes

The 1995 amendment by P.A. 89-145, effective July 14, 1995, added subsections (t) through (v).

The 2007 amendment by P.A. 95-678, effective October 11, 2007, at the end of (q), deleted “or the area of responsibility as defined in the franchise agreement, whichever is greater” following “dealership”; and made a related change.

The 2009 amendment by P.A. 96-11, effective May 22, 2009, added the second sentence in (a).

The 2017 amendment by P.A. 100-308, effective August 24, 2017, added the second sentence of (b).

CASE NOTES

Arbitration

Even if a car manufacture and a car dealership’s course of conduct following the expiration of their last written dealership agreement was sufficient to create a valid, oral franchise agreement, which appeared to be permitted pursuant to 815 ILCS 710/2(i), the creation of such an oral franchise agreement was not determinative of the issue of whether the parties could be compelled to arbitrate disputes arising under the agreement pursuant to 9 U.S.C. § 4. Section 4 required the existence of a written arbitration agreement, and without such a written agreement, it was left to the Illinois Motor Vehicle Review Board to decide whether the dealership had enforceable franchise rights. Nissan N. Am., Inc. v. Jim M'Lady Oldsmobile, Inc., 486 F.3d 989, 2007 U.S. App. LEXIS 11109 (7th Cir. Ill. 2007), dismissed, No. 07 C 6304, 2008 U.S. Dist. LEXIS 84700 (N.D. Ill. Aug. 29, 2008).

Factory Representative

A credit affiliate of a manufacturer fell within the definition of “factory representative” where it had the authority to stop the manufacturer from approving the sale of a dealership. Guardino v. Chrysler Corp., 294 Ill. App. 3d 1071, 229 Ill. Dec. 314, 691 N.E.2d 787, 1998 Ill. App. LEXIS 71 (Ill. App. Ct. 1st Dist. 1998).

Good Cause

Illinois State Motor Vehicle Board appropriately determined the issue of good cause for a manufacturer’s efforts to establish new dealership franchises in two areas according to standards of commercial reasonableness, weighing many factors against the existing franchise holders’ interest in protection against unreasonable competition within an area. GMC v. State Motor Vehicle Review Bd., 361 Ill. App. 3d 271, 297 Ill. Dec. 172, 836 N.E.2d 903, 2005 Ill. App. LEXIS 1028 (Ill. App. Ct. 4th Dist. 2005), aff'd, 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (Ill. 2007).

Market Area

Dealer who had a franchise agreement with the manufacturer did not show that the manufacturer engaged in conduct that violated the Illinois Motor Vehicle Franchise Act, 815 ILCS 705/1 et seq., and, thus, the dealer was not entitled to pursue a cause of action pursuant to it against the manufacturer. The manufacturer's eventual location of another dealer 90 miles away did not violate 815 ILCS 710/4(e)(8), requiring notice to be given to dealers, as the franchise agreement did not state the relevant market area for which notice would have to be given, which meant that notice had to be given under 815 ILCS 710/2(q) only if the other dealer was located within a 15-mile radius, and the dealer did not show that the manufacturer engaged in the unfair conduct contemplated in 815 ILCS 710/4(d)(6). Clark Invs., Inc. v. Airstream, Inc., 399 Ill. App. 3d 209, 339 Ill. Dec. 176, 926 N.E.2d 408, 2010 Ill. App. LEXIS 226 (Ill. App. Ct. 3d Dist. 2010).

Where a 1983 contract failed to provide a description of the market area of plaintiff 's dealership, and where, prior to 1983 amendments to this section, it had been held that the scope of the relevant market area was limited to that area described in the franchise agreement, and if none was specified, none existed; thus, notwithstanding a disagreement between the parties over who was responsible for obtaining or providing a statement of market scope, defendant had a vested contractual right under the 1983 contract to establish a new dealership in proximity to plaintiff, and since defendant exercised this right prior to the expiration of that contract, plaintiff had no remedy under this Act. Ace Cycle World, Inc. v. American Honda Motor Co., 788 F.2d 1225, 1986 U.S. App. LEXIS 24113 (7th Cir. Ill. 1986).

Motor Vehicle

Considering the plain and unambiguous language of the Illinois Motor Vehicle Franchise Act, its legislative history, and the recently amended 815 ILCS 715/2(4) of the Illinois Equipment Fair Dealership Law, the Illinois Legislature intends 815 ILCS 710/10.1(a) to apply only to motorcycles and off-highway vehicles required to be registered under the Illinois Vehicle Code, 625 ILCS 5/1-100 et seq. Therefore, a dealer was unable to file a protest over a termination letter received from a manufacturer because the all-terrain vehicles and snowmobiles sold by the dealer did not fit within the definition of "motorcycles" in 815 ILCS 710/10.1(a). Scholl's 4 Season Motor Sports, Inc. v. Ill. Motor Vehicle Review Bd., 2011 IL App (1st) 102995, 354 Ill. Dec. 411, 957 N.E.2d 1204, 2011 Ill. App. LEXIS 979 (Ill. App. Ct. 1st Dist. 2011).

Retroactive Application

This Act will not be applied retroactively; application of the Act to a franchise agreement that preexisted the Act is retroactive and thus an impermissible burden on vested contractual rights. Ace Cycle World, Inc. v. American Honda Motor Co., 788 F.2d 1225, 1986 U.S. App. LEXIS 24113 (7th Cir. Ill. 1986).

815 ILCS 710/3

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815 ILCS 710/3 Applicability of Act.

Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a motor vehicle within the State shall be subject to the provisions of this Act and shall be subject to the jurisdiction of the courts of this State.

History

P.A. 81-43.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 753.

CASE NOTES

Application and Construction

Cause of Action

Retroactive Application

Application and Construction

Whether application of this Act in a particular case would be impermissibly retroactive is determined by examining whether the Act takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposed a new duty, or attaches a new disability in respects of transactions or considerations already past; this Act is to be construed as operating prospectively so as not to violate the constitutional guarantee against impairment of the obligation of contracts. North Broadway Motors v. Fiat Motors of N. Am., 622 F. Supp. 466, 1984 U.S. Dist. LEXIS 23895 (N.D. Ill. 1984).

Cause of Action

Where a complaint referred to but did not incorporate parties' franchise agreement, and contained no mention of any other sources, written or otherwise, from which the market area served by plaintiff might be determined, the trial court correctly determined that the complaint failed to state a cause of action under this Act. Scala/O'Brien Porsche Audi, Inc. v. Volkswagen of America, Inc., 87 Ill. App. 3d 757, 43 Ill. Dec. 205, 410 N.E.2d 205, 1980 Ill. App. LEXIS 3479 (Ill. App. Ct. 1st Dist. 1980).

Retroactive Application

This Act does not apply retroactively to a franchise agreement which preexisted the statute. Marquette Nat'l Bank v. Loftus, 117 Ill. App. 3d 771, 73 Ill. Dec. 267, 454 N.E.2d 11, 1983 Ill. App. LEXIS 2244 (Ill. App. Ct. 1st Dist. 1983).

815 ILCS 710/3.1

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815 ILCS 710/3.1 Motor vehicle financing affiliate.

For purposes of this Act, a franchisee and a motor vehicle financing affiliate, as defined in Section 5-100 of the Illinois Vehicle Code [625 ILCS 5/5-100], shall be treated as a single entity. That a franchisee arranges to receive motor vehicles through a motor vehicle financing affiliate shall not exempt a manufacturer from the provisions of this Act. A manufacturer shall not require, directly or indirectly, a motor vehicle dealer to contract with a motor vehicle financing affiliate in order to receive its motor vehicles nor shall a manufacturer prevent, directly or indirectly, a motor vehicle dealer from contracting with a motor vehicle financing affiliate in order to receive its motor vehicles. A manufacturer shall not use a motor vehicle financing affiliate as a means of avoiding the provisions and requirements of this Act.

History

P.A. 91-415, § 10.

Annotations

Notes

Effective Dates

This section became effective January 1, 2000 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/2.

815 ILCS 710/4

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815 ILCS 710/4 Unfair competition and practices.

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

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

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

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

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

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

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

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

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

(A) service contracts;

(B) maintenance agreements;

(C) extended warranties;

(D) protection product guarantees;

(E) guaranteed asset protection waivers;

(F) insurance;

(G) replacement parts;

(H) vehicle accessories;

(I) oil; or

(J) supplies.

It is not a violation of this subsection to offer an incentive program to motor vehicle dealers to encourage them to sell or offer to sell a secondary product approved, endorsed, sponsored, or offered by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division, or officer, agent, or other representative thereof, provided the program does not provide vehicle sales or service incentives.

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

As used in this subsection, “secondary product” means all products that are not new motor vehicles or original equipment manufacturer parts.

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

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

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

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

(4) to coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to reduce his allocation of motor vehicles or cancel any franchise or any selling agreement existing between such manufacturer, distributor, wholesaler, distributor branch or division, or factory branch or division, or wholesale branch or division, and the dealer. However, notice in good faith to any motor vehicle dealer of the dealer’s violation of any terms or provisions of such franchise or selling agreement or of any law or regulation applicable to the conduct of a motor vehicle dealer shall not constitute a violation of this Act;

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

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

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

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

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

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

(B) If a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division intends to change substantially or modify the sales and service obligations or capital requirements of a motor vehicle dealer as a condition to extending or renewing the existing franchise or selling agreement of such motor vehicle dealer, it shall send a letter by certified mail, return receipt requested, to the affected franchisee at least 60 days before the date of expiration of the franchise or selling agreement. Each notice of proposed action shall include a detailed statement setting forth the specific grounds for the proposed action and shall state that the dealer has only 30 days from receipt of the notice to file with the Motor Vehicle Review Board a written protest against the proposed action.

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

When the protest has been timely filed, the Board shall enter an order, fixing a date (within 60 days of the date of the order), time, and place of a hearing on the protest required under Sections 12 and 29 of this Act [815 ILCS 710/12 and 815 ILCS 710/29], and send by certified mail, return receipt requested, a copy of the order to the manufacturer that filed the notice of intention of the proposed action and to the protesting dealer or franchisee.

The manufacturer shall have the burden of proof to establish that good cause exists to cancel or terminate, or fail to extend or renew the franchise or selling agreement of a motor vehicle dealer or franchisee, and to change substantially or modify the sales and service obligations or capital requirements of a motor vehicle dealer as a condition to extending or renewing the existing franchise or selling agreement. The determination whether good cause exists to cancel, terminate, or refuse to renew or extend the franchise or selling agreement, or to change or modify the obligations of the dealer as a condition to offer renewal, replacement, or succession shall be made by the Board under subsection (d) of Section 12 of this Act [815 ILCS 710/12].

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

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

(7) notwithstanding the terms of any franchise agreement, to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement for damages, including, but not limited to, court costs, expert witness fees, reasonable attorneys' fees of the new motor vehicle dealer, and other expenses incurred in the litigation, so long as such fees and costs are reasonable, arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale as defined in Section 2-608 of the Uniform Commercial Code [810 ILCS 5/2-608], to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, beyond the control of the dealer; provided that, in order to provide an adequate defense, the manufacturer receives notice of the filing of a complaint, claim, or lawsuit within 60 days after the filing;

(8) to require or otherwise coerce a motor vehicle dealer to underutilize the motor vehicle dealer's facilities by requiring or otherwise coercing the motor vehicle dealer to exclude or remove from the motor vehicle dealer's facilities operations for selling or servicing of any vehicles for which the motor vehicle dealer has a franchise agreement with another manufacturer, distributor, wholesaler, distribution branch or division, or officer, agent, or other representative thereof; provided, however, that, in light of all existing circumstances, (i) the motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, (ii) the new motor vehicle dealer remains in compliance with any reasonable facilities requirements of the manufacturer, (iii) no change is made in the principal management of the new motor vehicle dealer, and (iv) the addition of the make or line of new motor vehicles would be reasonable. The reasonable facilities requirement set forth in item (ii) of subsection (d)(8) shall not include any requirement that a franchisee establish or maintain exclusive facilities, personnel, or display space. Any decision by a motor vehicle dealer to sell additional makes or lines at the motor vehicle dealer's facility shall be presumed to be reasonable, and the manufacturer shall have the burden to overcome that presumption. A motor vehicle dealer must provide a written notification of its intent to add a make or line of new motor vehicles to the manufacturer. If the manufacturer does not respond to the motor vehicle dealer, in writing, objecting to the addition of the make or line within 60 days after the date that the motor vehicle dealer sends the written notification, then the manufacturer shall be deemed to have approved the addition of the make or line;

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

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

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

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

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

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

(11) to coerce or require any dealer to construct improvements to his or her facilities or to install new signs or other franchiser image elements that replace or substantially alter those improvements, signs, or franchiser image elements completed within the past 10 years that were required and approved by the manufacturer or one of its affiliates. The 10-year period under this paragraph (11) begins to run for a dealer, including that dealer's successors and assigns, on the date that the manufacturer gives final written approval of the facility improvements or installation of signs or other franchiser image elements or the date that the dealer receives a certificate of occupancy, whichever is later. For the purpose of this paragraph (11), the term "substantially alter" does not include routine maintenance, including, but not limited to, interior painting, that is reasonably necessary to keep a dealer facility in attractive condition; or

(12) to require a dealer to purchase goods or services to make improvements to the dealer's facilities from a vendor selected, identified, or designated by a manufacturer or one of its affiliates by agreement, program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer; however, approval by the manufacturer shall not be unreasonably withheld, and the dealer's option to select a vendor shall not be available if the manufacturer provides substantial reimbursement for the goods or services offered. "Substantial reimbursement" means an amount equal to or greater than the cost savings that would result if the dealer were to utilize a vendor of the dealer's own selection instead of using the vendor identified by the manufacturer. For the purpose of this paragraph (12), the term "goods" does not include movable displays, brochures, and promotional materials containing material subject to the intellectual property rights of a manufacturer. If signs, other than signs containing the manufacturer's brand or logo or free-standing signs that are not directly attached to a building, or other franchiser image or design elements or trade dress are to be leased to the dealer by a vendor selected, identified, or designated by the manufacturer, the dealer has the right to purchase the signs or other franchiser image or design elements or trade dress of substantially similar quality and design from a vendor selected by the dealer if the signs, franchiser image or design elements, or trade dress are approved by the manufacturer. Approval by the manufacturer shall not be unreasonably withheld. This paragraph (12) shall not be construed to allow a dealer or vendor to impair, infringe upon, or eliminate, directly or indirectly, the intellectual property rights of the manufacturer, including, but not limited to, the manufacturer's intellectual property rights in any trademarks or trade dress, or other intellectual property interests owned or controlled by the manufacturer. This paragraph (12) shall not be construed to permit a dealer to erect or maintain signs that do not conform to the manufacturer's intellectual property rights or trademark or trade dress usage guidelines.

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

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

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

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

(4) to prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or franchisee from changing the executive management control of the motor vehicle dealer or franchisee unless the franchiser, having the burden of proof, proves that such change of executive management will result in executive management control by a person or persons who are not of good moral character or who do not meet the franchiser's existing and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards in the market area. However, where the manufacturer rejects a proposed change in executive management control, the manufacturer shall give written notice of his reasons to the dealer within 60 days of notice to the manufacturer by the dealer of the proposed change. If the manufacturer does not send a letter to the franchisee by certified mail, return receipt requested, within 60 days from receipt by the manufacturer of the proposed change, then the change of the executive management control of the franchisee shall be deemed accepted as proposed by the franchisee, and the manufacturer shall give immediate effect to such change;

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

(6) to refuse to give effect to or prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties unless such sale or transfer is to a transferee who would not otherwise qualify for a new motor vehicle dealers license under the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.] or unless the franchiser, having the burden of proof, proves that such sale or transfer is to a person or party who is not of good moral character or does not meet the franchiser's existing and reasonable capital standards and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards in the market area. However, nothing herein shall be construed to prevent a franchiser from implementing affirmative action programs providing business opportunities for minorities or from complying with applicable federal, State or local law:

> **(A)** If the manufacturer intends to refuse to approve the sale or transfer of all or a part of the interest, then it shall, within 60 days from receipt of the completed application forms generally utilized by a manufacturer to conduct its review and a copy of all agreements regarding the

proposed transfer, send a letter by certified mail, return receipt requested, advising the franchisee of any refusal to approve the sale or transfer of all or part of the interest and shall state that the dealer only has 30 days from the receipt of the notice to file with the Motor Vehicle Review Board a written protest against the proposed action. The notice shall set forth specific criteria used to evaluate the prospective transferee and the grounds for refusing to approve the sale or transfer to that transferee. Within 30 days from the franchisee's receipt of the manufacturer's notice, the franchisee may file with the Board a written protest against the proposed action.

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

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

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

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

(8) to grant an additional franchise in the relevant market area of an existing franchise of the same line make or to relocate an existing motor vehicle dealership within or into a relevant market area of an existing franchise of the same line make. However, if the manufacturer wishes to grant such an additional franchise to an independent person in a bona fide relationship in which such person is prepared to make a significant investment subject to loss in such a dealership, or if the manufacturer wishes to relocate an existing motor vehicle dealership, then the manufacturer shall send a letter by certified mail, return receipt requested, to each existing dealer or dealers of the same line make whose relevant market area includes the proposed location of the additional or relocated franchise at least 60 days before the manufacturer grants an additional franchise or relocates an existing franchise of the same line make within or into the relevant market area of an existing franchisee of the same line make. Each notice shall set forth the specific grounds for the proposed grant of an additional or relocation of an existing franchise and shall state that the dealer has only 30 days from the date of receipt of the notice to file with the Motor Vehicle Review Board a written protest against the proposed action. Unless the parties agree upon the grant or establishment of the additional or relocated franchise within 30 days from the date the notice was received by the existing franchisee of the same line make or any person entitled to receive such notice, the franchisee or other person may file with the Board a written protest against the grant or establishment of the proposed additional or relocated franchise.

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

franchise and to the protesting dealer or dealers of the same line make whose relevant market area includes the proposed location of the additional or relocated franchise.

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

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

A. (Blank).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) reimburses the proposed transferee for all reasonable expenses incurred in evaluating, investigating, and negotiating the transfer of the dealership prior to the manufacturer's or distributor's exercise of its right of first refusal or other right to acquire the dealership. For purposes of this paragraph, "reasonable expenses" includes the usual and customary legal and accounting fees charged for similar work, as well as expenses associated with the evaluation and investigation of any real property on which the dealership is operated. The proposed transferee shall submit an itemized list of its expenses to the manufacturer or distributor not later than 30 days after the manufacturer's or distributor's exercise of the right of first refusal or other right to acquire the motor vehicle franchise. The manufacturer or distributor shall reimburse the proposed transferee for its expenses not later than 90 days after receipt of the itemized list. A manufacturer or distributor may request to be provided with the itemized list of expenses before exercising the manufacturer's or distributor's right of first refusal.

Except as provided in this paragraph (14), neither the selling dealer nor the manufacturer or distributor shall have any liability to any person as a result of a manufacturer or distributor exercising its right of first refusal.

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

(f) It is deemed a violation for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent, broker, shareholder, except a shareholder of 1% or less of the outstanding shares of any class of securities of a manufacturer, distributor, or wholesaler which is a publicly traded corporation, or other representative, directly or indirectly, to own or operate a place of business as a motor vehicle franchisee or motor vehicle financing affiliate, except that, this subsection shall not prohibit:

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

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

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

(A) the manufacturer does not otherwise manufacture, distribute, or sell motor vehicles as defined under Section 1-217 of the Illinois Vehicle Code [625 ILCS 5/1-217];

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

(C) the manufacturer complies with all obligations owed to dealers that are not owned, operated, or controlled by the manufacturer, including, but not limited to those obligations arising pursuant to Section 6 [815 ILCS 710/6];

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

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

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

For purposes of this subsection (g), the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either (i) requiring that the dealer establish or maintain exclusive dealership facilities; or (ii) restricting the ability of the dealer, or the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, or other similar agreement. "Site control

agreement" and "exclusive use agreement" also include a manufacturer restricting the ability of a dealer to transfer, sell, or lease the dealership premises by right of first refusal to purchase or lease, option to purchase, or option to lease if the transfer, sale, or lease of the dealership premises is to a person who is an immediate family member of the dealer. For the purposes of this subsection (g), "immediate family member" means a spouse, parent, son, daughter, son-in-law, daughter-in-law, brother, and sister.

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

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

(h) For purposes of this subsection:

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

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

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

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

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

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

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

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

For a period of 3 years from: (i) the date that a successor manufacturer acquires, succeeds to, or assumes any part of the business of a predecessor manufacturer; (ii) the last day that a former franchisee is authorized to remain in business as a franchised dealer with respect to a particular franchise under a termination agreement or deferred termination agreement with a predecessor or successor manufacturer; (iii) the last day that a former franchisee that was cancelled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended by a predecessor or successor manufacturer is authorized to remain in business as a franchised dealer with respect to a particular franchise; or (iv) November 25, 2009 (the effective date of Public Act 96-824), whichever is latest, it shall be unlawful for such successor manufacturer to enter into a same line make franchise with any person or to permit the relocation of any existing same line make franchise, for a line make of the predecessor manufacturer that would be located or relocated within the relevant market area of a former franchisee who owned or leased a dealership

facility in that relevant market area without first offering the additional or relocated franchise to the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or a person with a disability, at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer's other franchisees at that time, unless one of the following applies:

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

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

(3) The successor manufacturer proves that it would have had good cause to terminate the franchise agreement of the former franchisee, or the successor of the former franchisee under item (e)(10) in the event that the former franchisee is deceased or a person with a disability. The determination of whether the successor manufacturer would have had good cause to terminate the franchise agreement of the former franchisee, or the successor of the former franchisee, shall be made by the Board under subsection (d) of Section 12. A successor manufacturer that seeks to assert that it would have had good cause to terminate a former franchisee, or the successor of the former franchisee, must file a petition seeking a hearing on this issue before the Board and shall have the burden of proving that it would have had good cause to terminate the former franchisee or the successor of the former franchisee. No successor dealer, other than the former franchisee, may be appointed or franchised by the successor manufacturer within the relevant market area of the former franchisee until the Board has held a hearing and rendered a determination on the issue of whether the successor manufacturer would have had good cause to terminate the former franchisee.

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

History

P.A. 87-625; 87-1163, § 1; 89-145, § 15; 90-655, § 192; 91-415, § 10; 91-485, § 5; 91-701, § 5; 94-287, § 10; 96-11, § 5; 96-824, § 5; 99-143, § 1045; 99-844, § 5; 2017 P.A. 100-201, § 815, effective August 18, 2017; 2017 P.A. 100-308, § 5, effective August 24, 2017; 2018 P.A. 100-863, § 680, effective August 14, 2018; 2021 P.A. 102-433, § 5, effective January 1, 2022.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 754.

Amendment Notes

The 1995 amendment by P.A. 89-145, effective July 14, 1995, rewrote this section.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, appears to have made no changes to this section.

The 1999 amendment by P.A. 91-415, effective January 1, 2000, added subsection (f).

The 1999 amendment by P.A. 91-485, effective January 1, 2000, throughout the section inserted “and shall state that the dealer [or the designated successor] has only 30 days from receipt of the notice to file with the Motor Vehicle Review Board a written protest against the proposed action”; in subsection (d)(6)(C) substituted “30 days” for “15 days”, in subsection (d)(7) inserted “expert witness fees”, “and other expenses incurred in the litigation, so long as such fees and costs are reasonable” and the final proviso; and in the third paragraph of subsection (e)(10)(A) substituted “30 days” for “15 days”.

The 2000 amendment by P.A. 91-701, effective May 12, 2000, incorporated the amendments by P.A. 91-415 and 91-485; and in subsection (e)(8)C deleted “or is further away from the nearest dealer of the same line make” at the end of the first and second sentences and added the last sentence.

The 2005 amendment by P.A. 94-287, effective January 1, 2006, in the third sentence of (e)(6)(B)(8), added the language beginning “and shall state that the dealer” to the end of the sentence, and in the last sentence deleted “and shall state that the dealer only has 30 days from the receipt of the notice to file with the Motor Vehicle Review Board a written protest against the proposed action” from the end.

The 2009 amendment by P.A. 96-11, effective May 22, 2009, deleted the second paragraph of (d)(6)(D), which read: “Good cause shall exist to cancel, terminate or fail to offer a renewal or replacement franchise or selling agreement to all franchisees of a line make if the manufacturer permanently discontinues the manufacture or assembly of motor vehicles of such line make”; added (d)(8) and (d)(9); and made related changes.

The 2009 amendment by P.A. 96-824, effective November 25, 2009, added subsections (g) and (h).

The 2015 amendment by P.A. 99-143, effective July 27, 2015, made stylistic changes

The 2016 amendment by P.A. 99-844, effective August 19, 2016, substituted “wholesaler” for “wholesale” in the introductory language of (f); added the (f)(1) and (f)(2) designations; added (f)(3); and made related changes.

The 2017 amendment by P.A. 100-201, effective August 18, 2017, substituted “rescission” for “recision” in (d)(7); substituted “November 25, 2009 (the effective date of Public Act 96-824)” for “the effective date of this amendatory Act of the 96th General Assembly” in the last paragraph of (g) and in the introductory language of the last paragraph of (h).

The 2017 amendment by P.A. 100-308, effective August 24, 2017, substituted “rescission” for “recision” in (d)(7); added (d)(10) through (d)(12); added (e)(14); substituted “November 25, 2009 (the effective date of Public Act 96-824)” for “the effective date of this amendatory Act of the 96th General Assembly” in the last paragraph of (g) and the introductory language of (h); and made related and stylistic changes.

The 2018 revisory amendment by P.A. 100-863, effective August 14, 2018, made stylistic changes.

The 2021 amendment by P.A. 102-433, effective January 1, 2022, added (c-5).

CASE NOTES

Constitutionality

—Subdivision (d)(1)

Subdivision (d)(1) is not unconstitutionally vague and in violation of due process as the terms “arbitrary” and “capricious” are neither so esoteric nor so vague as to require specific definition. Belleville Toyota v. Toyota Motor Sales, U.S.A., Inc., 316 Ill. App. 3d 227, 250 Ill. Dec. 469, 738 N.E.2d 938, 2000 Ill. App. LEXIS 720 (Ill. App. Ct. 5th Dist. 2000), aff'd in part and rev'd in part, 199 Ill. 2d 325, 264 Ill. Dec. 283, 770 N.E.2d 177, 2002 Ill. LEXIS 289 (Ill. 2002).

—Subdivision (e)(8)

The investigation into and weighing of the statutory and nonstatutory factors in order to decide whether a dealership should be established or relocated, and what the public interest and welfare is in each case involving a proposed dealership, are not functions which courts are equipped to perform nor which the legislature may constitutionally require them to perform; the circuit court judgments holding unconstitutional subdivision (e)(8) of this section and 815 ILCS 710(12)(c) were affirmed by the Fields Jeep-Eagle v. Chrysler Corp., 163 Ill. 2d 462, 206 Ill. Dec. 694, 645 N.E.2d 946, 1994 Ill. LEXIS 170 (Ill. 1994).

Applicability

—Credit Company

Credit company was held not to be among the parties that could be held liable under subsection (b). TLMS Motor Corp. v. Toyota Motor Distribs., 912 F. Supp. 329, 1995 U.S. Dist. LEXIS 16152 (N.D. Ill. 1995).

—Not Stated

Motor vehicle dealer failed to state a cause of action under 815 ILCS 710/4(d)(6) (2008) of the Motor Vehicle Franchise Act where although the dealer alleged that the corporation's conduct was arbitrary and in bad faith, given that the corporation and its subsidiary told the dealer the sales and service agreement would continue, it could not be arbitrary or an act of bad faith to require the dealer to comply with its contractual obligations. Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 406 Ill. App. 3d 325, 348 Ill. Dec. 38, 943 N.E.2d 646, 2010 Ill. App. LEXIS 1268 (Ill. App. Ct. 4th Dist. 2010), aff'd, 2011 IL 111611, 355 Ill. Dec. 400, 959 N.E.2d 1133, 2011 Ill. LEXIS 1837 (Ill. 2011).

Dismissal of plaintiff's action against manufacturer's affiliate was proper because allegations in the complaint regarding the affiliate's insistence that it be paid for "out of trust" vehicles did not state a cause of action. Guardino v. Chrysler Corp., 294 Ill. App. 3d 1071, 229 Ill. Dec. 314, 691 N.E.2d 787, 1998 Ill. App. LEXIS 71 (Ill. App. Ct. 1st Dist. 1998).

This Act may not be invoked by a dealer whose hopes for a new franchise were thwarted when the franchisor revoked a letter of intent setting forth conditions, which if met, might have resulted in the award of a franchise. Knauz v. Toyota Motor Sales, Inc., 720 F. Supp. 1327, 1989 U.S. Dist. LEXIS 10220 (N.D. Ill. 1989).

Where a complaint referred to but did not incorporate parties' franchise agreement, and contained no mention of any other sources, written or otherwise, from which the market area served by plaintiff might be determined, the trial court correctly determined that the complaint failed to state a cause of action under this Act. Scala/O'Brien Porsche Audi, Inc. v. Volkswagen of America, Inc., 87 Ill. App. 3d 757, 43 Ill. Dec. 205, 410 N.E.2d 205, 1980 Ill. App. LEXIS 3479 (Ill. App. Ct. 1st Dist. 1980).

Damages

There is no suggestion made in this Act that the legislature intended to limit damages, equitable relief, and treble damages to actions described in this section. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

Franchise Termination

In Fifth Amendment takings action by car dealers whose franchise agreements were rejected when automobile manufacturer went into bankruptcy, court entered findings in favor of United States because car dealers failed to establish government coerced manufacturer into filing for bankruptcy under government's negotiated bankruptcy terms or into rejecting any franchise agreements. Because evidence established that manufacturer would have faced immediate liquidation in Chapter 7 bankruptcy without government assistance, dealers failed to prove franchise agreements would have had value in "but-for world" without government assistance. Thus, dealers failed to prove property was "taken" from them. Colonial Chevrolet Co. v. United States, No. 10-647C, 145 Fed. Cl. 243, 2019 U.S. Claims LEXIS 1311 (Fed. Cl. Oct. 2, 2019), aff'd, 841 Fed. Appx. 205, 2020 U.S. App. LEXIS 40691 (Fed. Cir. 2020).

Statutory protections under 815 ILCS 710/4(h) granted to existing automobile dealerships against adverse action by a successor to an automobile manufacturer were unenforceable against the purchaser of assets of bankruptcy debtors which were automobile manufacturers, since the state statute was preempted by the debtors' federal bankruptcy right to reject executory dealership contracts. Old Carco LLC v. Kroger (In re Old Carco LLC), 442 B.R. 196, 2010 U.S. Dist. LEXIS 131107 (S.D.N.Y. 2010).

—Good Cause

Motor vehicle dealer or franchisee may bring a 815 ILCS 710/4(d)(6) claim in the Motor Vehicle Review Board (MVRB), where the Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq. (2010), has prescribed specific detailed procedures for handling such claims. Then, if no good cause is found for the termination of the dealer's franchise, a claim can be filed in the circuit court for damages. The legislature intended this to be a two-step process. Crossroads Ford Truck Sales v. Sterling Truck Corp., 2011 IL 111611, 355 Ill. Dec. 400, 959 N.E.2d 1133, 2011 Ill. LEXIS 1837 (Ill. 2011).

Claims seeking damages under 815 ILCS 710/4(e)(6) of Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq. (2010), must be brought originally in the Motor Vehicle Review Board. The circuit court does not have subject matter jurisdiction over such claims. Crossroads Ford Truck Sales v. Sterling Truck Corp., 2011 IL 111611, 355 Ill. Dec. 400, 959 N.E.2d 1133, 2011 Ill. LEXIS 1837 (Ill. 2011).

Trial court properly granted the manufacturer's motion for a judgment on the pleadings because the 2001 addendum to the parties' franchise agreement and the provision for issuing future addenda did not offend the Motor Vehicle Franchise Act, 815 ILCS 710/1 through 32, where it was not against the law or public policy for a dealer to enter into a contract with a manufacturer to buy a specified number of trucks, parts, and tools and to employ a specified number of personnel; once a dealer had freely entered into such a contract, it was not coercion to demand that the dealer perform it, and the 2001 addendum was not a unilateral modification because it was actually part of the agreement that the dealer signed. Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 341 Ill. App. 3d 438, 275 Ill. Dec. 257, 792 N.E.2d 488, 2003 Ill. App. LEXIS 863 (Ill. App. Ct. 4th Dist. 2003).

The good-faith provision does not entitle a franchisee to complain about a pretextual termination even if there is good cause for termination; the fact that there is a duty of good faith read into every contract does not justify judicial inquiry into motive. Tuf Racing Prods., Inc. v. American Suzuki Motor Corp., 223 F.3d 585, 2000 U.S. App. LEXIS 17728 (7th Cir. Ill. 2000).

Ongoing deception by franchisee constituted good cause for termination of franchise. David Glen, Inc. v. Saab Cars USA, 837 F. Supp. 888, 1993 U.S. Dist. LEXIS 15092 (N.D. Ill. 1993).

Good cause exists where a franchisee fails to substantially comply with the franchise agreement or where the franchisee commits a breach of contract that affects the franchiser's ability to market its product. David Glen, Inc. v. Saab Cars USA, 837 F. Supp. 888, 1993 U.S. Dist. LEXIS 15092 (N.D. Ill. 1993).

Where a dealer was willing to market products in accordance with contract requirements for multiline dealerships and the manufacturer was only interested in terminating the dealer to prevent competition, the manufacturer did not

have good cause to terminate the franchise. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

Franchise Transfer

A car distributor violates this act if they refuse to approve a proposal to transfer the franchise to a qualified buyer. David Glen, Inc. v. Saab Cars USA, 837 F. Supp. 888, 1993 U.S. Dist. LEXIS 15092 (N.D. Ill. 1993).

Distributor did not violate this act by denial of transfer of franchise, where the franchise owner did not submit a transfer proposal to the distributor until after it received notice that its franchise was being terminated. David Glen, Inc. v. Saab Cars USA, 837 F. Supp. 888, 1993 U.S. Dist. LEXIS 15092 (N.D. Ill. 1993).

Immediate Delivery

Plaintiff failed to create a factual issue that defendant specifically advertised that the vehicles it furnished to plaintiff were available for immediate delivery therefore summary judgment was granted. Olympic Chevrolet v. GMC, 959 F. Supp. 918, 1997 U.S. Dist. LEXIS 3999 (N.D. Ill. 1997).

Jurisdiction

Issues as to whether good cause existed to cancel or terminate a franchise or the refusal to extend the franchise were matters best left to the arbitrator or the Motor Vehicle Review Board under § 12(d) (815 ILCS 710/12(d) (2008)) of the Motor Vehicle Franchise Act and not the judiciary. As the circuit court did not have subject-matter jurisdiction over the 815 ILCS 710/4(d)(6) (2008) claims, the portions of the order dealing with those respective claims in the second-amended complaint were void and would not be addressed in the appeal. Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 406 Ill. App. 3d 325, 348 Ill. Dec. 38, 943 N.E.2d 646, 2010 Ill. App. LEXIS 1268 (Ill. App. Ct. 4th Dist. 2010), aff'd, 2011 IL 111611, 355 Ill. Dec. 400, 959 N.E.2d 1133, 2011 Ill. LEXIS 1837 (Ill. 2011).

Legislative Intent

The General Assembly intended to prohibit those sales promotion plans where manufacturers discounted motor vehicles to some dealers but not others, to help specific dealers; thus, such plans which affect the price the dealer pays would be prohibited, but plans that are linked to dealer performance after receipt of the vehicle are allowed. Knauz Cont'l Autos, Inc. v. Land Rover N. Am., Inc., 842 F. Supp. 1034, 1993 U.S. Dist. LEXIS 16142 (N.D. Ill. 1993).

Market Area

—Lack of Description

Where a contract failed to provide a description of the market area of plaintiff ’s dealership, and where prior to the 1983 amendments to this section, it had been held that the scope of the relevant market area was limited to that area described in the franchise agreement, and if none was specified, none existed; thus notwithstanding a disagreement between the parties over who was responsible for obtaining or providing a statement of market scope, defendant had a vested contractual right under the 1983 contract to establish a new dealership in proximity to plaintiff, and since defendant exercised this right prior to the expiration of that contract, plaintiff had no remedy under this Act. Ace Cycle World, Inc. v. American Honda Motor Co., 788 F.2d 1225, 1986 U.S. App. LEXIS 24113 (7th Cir. Ill. 1986).

Notice

—Held Sufficient

Notice which gave plaintiff a little more than 60 days to oppose a relocation before defendants moved ahead with their plans was sufficient. Velde Ford Sales, Inc. v. John Bearce Ford, Inc., 201 Ill. App. 3d 866, 147 Ill. Dec. 327, 559 N.E.2d 500, 1990 Ill. App. LEXIS 1172 (Ill. App. Ct. 3d Dist. 1990).

—Legislative Intent

The intent of this section is to give fair notice to an existing franchisee so that any objections can be formulated and communicated to the franchiser before the market is affected by a proposed change. Velde Ford Sales, Inc. v. John Bearce Ford, Inc., 201 Ill. App. 3d 866, 147 Ill. Dec. 327, 559 N.E.2d 500, 1990 Ill. App. LEXIS 1172 (Ill. App. Ct. 3d Dist. 1990).

Retroactive Application

Purpose of applying 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c), prospectively is to protect the vested contract rights of the parties to vehicle dealer franchise agreements, and distinguishing between franchisees who entered franchise agreements prior to the 1995 amendments to the Illinois Motor Vehicle Franchise Act and franchisees who entered franchise agreements after the 1995 amendments to the Act is rationally related to that purpose. Thus, the prospective application of 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c) does not violate equal protection principles. Yakubinis v. Yamaha Motor Corp., U.S.A., 365 Ill. App. 3d 128, 301 Ill. Dec. 542, 847 N.E.2d 552, 2006 Ill. App. LEXIS 185 (Ill. App. Ct. 1st Dist. 2006).

1995 versions of 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c) created new substantive rights in vehicle dealer franchisees to protest the creation of new or the relocation of old franchises into their relevant market territories absent a showing of good cause. Thus, the statutes could not be applied retroactively to pre-1995 vehicle dealer franchise agreements, and as prior versions of the statutes had been ruled unconstitutional and were void ab initio, the statutory sections could not be used by a 1989 franchisee to protest the relocation of another franchise into his relevant market area. Yakubinis v. Yamaha Motor Corp., U.S.A., 365 Ill. App. 3d 128, 301 Ill. Dec. 542, 847 N.E.2d 552, 2006 Ill. App. LEXIS 185 (Ill. App. Ct. 1st Dist. 2006).

This Act will not be applied retroactively; application of the Act to a franchise agreement that preexisted the Act is retroactive and thus an impermissible burden on vested contractual rights. Ace Cycle World, Inc. v. American Honda Motor Co., 788 F.2d 1225, 1986 U.S. App. LEXIS 24113 (7th Cir. Ill. 1986).

When a motor vehicle dealer and automobile manufacturer entered into a motor vehicle franchise agreement, each party acquired the right to refuse to renew it without showing good cause; to have required the dealer to make such a showing would have imposed a new duty in respect of a transaction already past and would therefore have constituted a retroactive application of the Act. McAleer Buick-Pontiac Co. v. General Motors Corp., 95 Ill. App. 3d 111, 50 Ill. Dec. 500, 419 N.E.2d 608, 1981 Ill. App. LEXIS 2418 (Ill. App. Ct. 4th Dist. 1981).

Standing

Potential successor franchisees did not have standing under subdivision (e)(11), as this subdivision was designed to protect only existing franchisees. David Glen, Inc. v. Saab Cars USA, 837 F. Supp. 888, 1993 U.S. Dist. LEXIS 15092 (N.D. Ill. 1993).

This Act provides standing only to franchisees and motor vehicle dealers. David Glen, Inc. v. Saab Cars USA, 837 F. Supp. 888, 1993 U.S. Dist. LEXIS 15092 (N.D. Ill. 1993).

Buyers of franchise agreement lacked standing to bring a claim under subdivision (d)(6) of this section, for it limited its scope to a franchisee or motor vehicle dealer whose existing franchise or selling agreement has been terminated or cancelled. David Glen, Inc. v. Saab Cars USA, 837 F. Supp. 888, 1993 U.S. Dist. LEXIS 15092 (N.D. Ill. 1993).

Violation

—Evidence

Dealer who had a franchise agreement with the manufacturer did not show that the manufacturer engaged in conduct that violated the Illinois Motor Vehicle Franchise Act, 815 ILCS 705/1 et seq., and, thus, the dealer was not entitled to pursue a cause of action pursuant to it against the manufacturer. The manufacturer's eventual location of another dealer 90 miles away did not violate 815 ILCS 710/4(e)(8), requiring notice to be given to dealers, as the franchise agreement did not state the relevant market area for which notice would have to be given, which meant that notice had to be given under 815 ILCS 710/2(q) only if the other dealer was located within a 15-mile radius, and the dealer did not show that the manufacturer engaged in the unfair conduct contemplated in 815 ILCS 710/4(d)(6). Clark Invs., Inc. v. Airstream, Inc., 399 Ill. App. 3d 209, 339 Ill. Dec. 176, 926 N.E.2d 408, 2010 Ill. App. LEXIS 226 (Ill. App. Ct. 3d Dist. 2010).

Violation of subsection (d)(1) was established where the plaintiff presented evidence that the defendants' regional managers used their discretion to allocate vehicles to dealers just to improve the dealer's future allocation, without any identification of special circumstances, and that the managers allocated excessive numbers of vehicles to certain dealers without regard for the numerical limits set in defendants' own policy manual. Belleville Toyota v. Toyota Motor Sales, U.S.A., Inc., 316 Ill. App. 3d 227, 250 Ill. Dec. 469, 738 N.E.2d 938, 2000 Ill. App. LEXIS 720 (Ill. App. Ct. 5th Dist. 2000), aff'd in part and rev'd in part, 199 Ill. 2d 325, 264 Ill. Dec. 283, 770 N.E.2d 177, 2002 Ill. LEXIS 289 (Ill. 2002).

Summary judgment in favor of manufacturer was proper where plaintiff failed to present more than conclusions that manufacturer violated this section when it approved the sale of dealership it should have known was in financial trouble, denied a loan to plaintiff, and delayed approval of plaintiff's sale of the dealership's assets. Guardino v. Chrysler Corp., 294 Ill. App. 3d 1071, 229 Ill. Dec. 314, 691 N.E.2d 787, 1998 Ill. App. LEXIS 71 (Ill. App. Ct. 1st Dist. 1998).

—Reasonable Business Judgment

The exercise of reasonable business judgment does not necessarily insulate a manufacturer or distributor from violation of subsection (b). Knauz Cont'l Autos, Inc. v. Land Rover N. Am., Inc., 842 F. Supp. 1034, 1993 U.S. Dist. LEXIS 16142 (N.D. Ill. 1993).

—Sufficiency of Pleadings

Where the estate representative for a Chapter 11 debtor/car dealer alleged that a lender acted in concert with the car manufacturer and in bad faith by using its leverage to coerce the debtor into discriminating against minority customers, and by interfering with a sale of the dealership to a part-owner on account of his ethnicity, Hispanic, the complaint alleged facts sufficient for relief under 815 ILCS 710/4(b) because the facts alleged provided a basis for treating the lender as a "factory representative" and, by attempting to coerce the debtor to alter how it managed the dealership, the lender's misconduct was certainly "action with respect to a franchise." Lepetomane XXII, Inc. v. DaimlerChrysler Motors Co., LLC (In re Suburban Dodge of Berwyn, Inc.), No. 04-B-42931, No. 06-01727, 2007 Bankr. LEXIS 1479 (Bankr. N.D. Ill. Apr. 24, 2007).

Where the estate representative for a Chapter 11 debtor/car dealer alleged that a lender acted in bad faith by using its leverage to coerce the debtor into discriminating against minority customers, the complaint did not state a valid

cause of action under 815 ILCS 710/4(e)(9) because the debtor never assented to a release of its rights under the Illinois Motor Vehicle Franchise Act. Lepetomane XXII, Inc. v. DaimlerChrysler Motors Co., LLC (In re Suburban Dodge of Berwyn, Inc.), No. 04-B-42931, No. 06-01727, 2007 Bankr. LEXIS 1479 (Bankr. N.D. Ill. Apr. 24, 2007).

Where the estate representative for a Chapter 11 debtor/car dealer alleged that a lender violated 815 ILCS 710/4(e)(6) by interfering with a sale of the dealership to a part-owner on account of his ethnicity, Hispanic, and wrongfully delayed an asset sale in retaliation for the debtor's failure to capitulate to its demands, the court lacked jurisdiction to make a determination that the lender impermissibly interfered with the sale or transfer of an interest in the debtor because § 710/4(e)(6) did not provide a mechanism for obtaining court review. Lepetomane XXII, Inc. v. DaimlerChrysler Motors Co., LLC (In re Suburban Dodge of Berwyn, Inc.), No. 04-B-42931, No. 06-01727, 2007 Bankr. LEXIS 1479 (Bankr. N.D. Ill. Apr. 24, 2007).

Where the estate representative for a Chapter 11 debtor/car dealer alleged that a lender manipulated the debtor's credit in part to influence the debtor's advertising activities, ultimately causing the debtor to curtail certain television campaigns and shopping mall advertisements, the complaint did not state a valid cause of action under 815 ILCS 710/4(d)(5) because the loss of revenue that allegedly resulted from the cessation of the debtor's television and mall campaigns was not the type of harm that § 710/4(d)(5) addressed. Lepetomane XXII, Inc. v. DaimlerChrysler Motors Co., LLC (In re Suburban Dodge of Berwyn, Inc.), No. 04-B-42931, No. 06-01727, 2007 Bankr. LEXIS 1479 (Bankr. N.D. Ill. Apr. 24, 2007).

Where the estate representative for a Chapter 11 debtor/car dealer alleged that a lender acted in bad faith by coercing the debtor into discriminating against minority customers, the complaint did not state a valid cause of action under 815 ILCS 710/4(d)(4) because the complaint did not allege that the lender threatened to reduce the debtor's allocation of motor vehicles or to cancel any franchise or selling agreement. Lepetomane XXII, Inc. v. DaimlerChrysler Motors Co., LLC (In re Suburban Dodge of Berwyn, Inc.), No. 04-B-42931, No. 06-01727, 2007 Bankr. LEXIS 1479 (Bankr. N.D. Ill. Apr. 24, 2007).

Research References & Practice Aids

Research References and Practice Aids

Illinois Administrative Code.

See 86 Illinois Administrative Code, § 130.2013.

815 ILCS 710/5

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/5 Delivery and preparation obligations; damage disclosures.

Every manufacturer shall specify in writing to the dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be presented to the dealer and the obligations specified therein shall constitute any such dealer's only predelivery obligations as between such dealer and such manufacturer. The compensation as set forth on said schedule shall be reasonable.

A manufacturer, factory branch, distributor, distributor branch, or wholesaler of new motor vehicles sold or transferred to a motor vehicle dealer in this State shall disclose to the motor vehicle dealer, in writing, before delivery of a vehicle to the motor vehicle dealer all in-transit, post-manufacture, or other damage to the vehicle that was sustained or incurred by the motor vehicle at any time after the manufacturing process was complete but before delivery of the vehicle to the dealer. This disclosure is not required when the cost to repair does not exceed 6% of the manufacturer's suggested retail price of the vehicle based upon the dealer's actual retail repair cost, including labor, parts, and materials if the damage is repaired or retail estimate to repair if the vehicle is not repaired. New motor vehicles that are repaired may be sold as new and shall be fully warranted by the manufacturer.

For purposes of this Section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each separately priced accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery.

Whenever a new motor vehicle sustains or incurs any in-transit, post-manufacture, or other damage at any time after the manufacturing process is complete, but before delivery of the vehicle to the motor vehicle dealer, the dealer may within a reasonable period of time after delivery of the motor vehicle notify the manufacturer or distributor of that damage and either:

(1) revoke acceptance of the delivery of the new motor vehicle whereby ownership of the motor vehicle shall revert to the manufacturer, and the dealer shall incur no obligations, financial, or otherwise for that new motor vehicle; or

(2) request authorization from the manufacturer to repair the damage sustained or incurred by the new motor vehicle. If the manufacturer refuses or fails to authorize repair of the damage within 3 days of the request by the dealer, the dealer may then revoke acceptance of the delivery of the new motor vehicle; ownership shall revert to the manufacturer; and the dealer shall incur no obligations, financial, or otherwise for that new motor vehicle.

A motor vehicle dealer shall disclose to the purchaser before delivery of the new motor vehicle, in writing, any damage that the dealer has actual knowledge was sustained or incurred by the motor vehicle at any time after the manufacturing process was complete but before delivery of the vehicle to the purchaser. This disclosure is not required when the cost to repair does not exceed 6% of the manufacturer's suggested retail price of the vehicle based upon the dealer's actual retail repair cost, including labor, parts, and materials if the damage is repaired or the retail estimate to repair the vehicle if it is not repaired.

Damage to glass, tires, bumpers, video and telephonic components, and in-dash audio equipment is not to be considered in determining the cost of repair if replaced with the manufacturer's original equipment.

If disclosure is not required under this Section, a purchaser may not revoke or rescind a sales contract due to the fact the new vehicle was damaged and repaired before completion of the sale. In that circumstance, nondisclosure does not constitute a misrepresentation or omission of fact.

A manufacturer, factory branch, distributor, distributor branch, or wholesaler of new motor vehicles shall, notwithstanding the terms of any franchise agreement, indemnify and hold harmless the motor vehicle dealer obtaining a new motor vehicle from the manufacturer, factory branch, distributor, distributor branch, or wholesaler from and against any liability, including reasonable attorney's fees, expert witness fees, court costs, and other expenses incurred in the litigation, so long as such fees and costs are reasonable, that the motor vehicle dealer may be subjected to by the purchaser of the vehicle because of damage to the motor vehicle that occurred before delivery of the vehicle to the dealer and that was not disclosed in writing to the dealer prior to delivery of the vehicle. This indemnity obligation of the manufacturer, factory branch, distributor, distributor branch, or wholesaler applies regardless of whether the damage falls below the 6% threshold under this Section. The failure of the manufacturer, factory branch, distributor, distributor branch, or wholesaler to indemnify and hold harmless the motor vehicle dealer is a violation of this Section.

History

P.A. 83-922; 88-581, § 5; 91-485, § 5; 92-758, § 5.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 755.

Amendment Notes

The 1994 amendment by P.A. 88-581, effective January 1, 1995, in the section catchline added "damage disclosures" at the end; and added the second through seventh paragraphs.

The 1999 amendment by P.A. 91-485, effective January 1, 2000, inserted "expert witness fees, court costs, and other expenses incurred in the litigation, so long as such fees and costs are reasonable" and "to" following "may be subjected" in the first sentence of the last paragraph.

The 2002 amendment by P.A. 92-758, effective January 1, 2003, inserted "video and telephonic components," in the eighth paragraph.

CASE NOTES

In General

Claims relating to Illinois Motor Vehicle Franchise Act [815 ILCS 710/1 et seq.] were decided by district courts without need for input from Illinois Motor Vehicle Review Board; therefore, motion to stay pursuant to doctrine of primary jurisdiction was denied. Rolls-Royce PLC v. Luxury Motors, Inc., No. 03 C 5953, 2004 U.S. Dist. LEXIS 11077 (N.D. Ill. June 16, 2004).

Because the Franchise Act, 815 ILCS 710/5, specifically referred to the manufacturer's suggested retail price and because there remained an issue of fact as to the MSRP of a vehicle at issue, summary judgment was precluded. Stone v. Clifford Chrysler-Plymouth, 333 Ill. App. 3d 363, 266 Ill. Dec. 530, 775 N.E.2d 92, 2002 Ill. App. LEXIS 662 (Ill. App. Ct. 1st Dist. 2002).

Dealer Representations

Questions of fact regarding the intent of a car dealer's representative in making assurances to a customer and regarding how much the dealer knew of the car's past history precluded summary judgment on the customer's claims alleging violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 5/5-1 et seq. and the Illinois Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq. as well as common law fraud. Hart v. Boehmer Chevrolet Sales, Inc., 337 Ill. App. 3d 742, 272 Ill. Dec. 535, 787 N.E.2d 350, 2003 Ill. App. LEXIS 411 (Ill. App. Ct. 2003).

815 ILCS 710/6

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

815 ILCS 710/6 Warranty agreements; claims; approval; payment; written disapproval.

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

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

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

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

No warranty or factory compensated repairs shall be excluded from this requirement, including recalls or other voluntary stop-sell repairs required by the manufacturer. If a manufacturer is required to issue a recall, the dealer will be compensated for labor time as above stated.

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

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

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

In no event shall compensation to a motor vehicle dealer for labor times and labor rates be less than the rates charged by such dealer for like service to retail customers for nonwarranty service and repairs. Additionally, the manufacturer shall reimburse the dealer for any parts provided in satisfaction of a warranty at the prevailing retail price charged by that dealer for the same parts when not provided in satisfaction of a warranty; provided that such dealer's prevailing retail price is not unreasonable when compared with that of

the holders of motor vehicle franchises from the same manufacturer for identical parts in the geographic area in which the dealer is engaged in business.

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

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

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

If a manufacturer imposes a recall or stop sale on any new vehicle in a dealer's inventory that prevents the sale of the vehicle, the manufacturer shall compensate the dealer for any interest and storage until the vehicle is repaired and made ready for sale.

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

All claims, either original or resubmitted, made by motor vehicle dealers hereunder and under Section 5 [815 ILCS 710/5] for such labor and parts shall be either approved or disapproved within 30 days following their submission. All approved claims shall be paid within 30 days following their approval. The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and each such notice shall state the specific grounds upon which the disapproval is based. The motor vehicle dealer shall be permitted to correct and resubmit such disapproved claims within 30 days of receipt of disapproval. Any claims not specifically disapproved in writing within 30 days from their submission shall be deemed approved and payment shall follow within 30 days. The manufacturer or franchiser shall have the right to require reasonable documentation for claims and to audit such claims within a one year period from the date the claim was paid or credit issued by the manufacturer or franchiser, and to charge back any false or unsubstantiated claims. The audit and charge back provisions of this Section also apply to all other incentive and reimbursement programs for a period of one year after the date the claim was paid or credit issued by the manufacturer or franchiser. However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this State that the claim is fraudulent.

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

(d) For the purposes of this Section, the "prevailing retail price charged by that dealer for the same parts" means the price paid by the motor vehicle franchisee for parts, including all shipping and other charges, multiplied by the sum of 1.0 and the franchisee's average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchiser and sold at retail. The motor vehicle franchisee may establish average percentage markup under this Section by submitting to the motor vehicle franchiser 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the motor vehicle franchiser and adjustment of the average percentage markup based on that audit. Any audit must be conducted within 30 days following the declaration. Only retail sales not involving warranty repairs, parts covered by subsection (e) of this Section, or parts supplied for routine vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchiser shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide,

including, but not limited to, part by part or transaction by transaction calculations. A motor vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year.

(e) If a motor vehicle franchiser supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchiser. The requirements of this subsection (e) shall not apply to entire engine assemblies, propulsion engine assemblies, including electric vehicle batteries, and entire transmission assemblies. In the case of those assemblies, the motor vehicle franchiser shall reimburse the motor vehicle franchisee up to and including 30% of what the motor vehicle franchisee would have paid the motor vehicle franchiser for the assembly if the assembly had not been supplied by the franchiser other than by the sale of that assembly to the motor vehicle franchisee.

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

(g) (Blank).

History

P.A. 83-922; 87-1163, § 1; 91-485, § 5; 92-498, § 5; 92-651, § 96; 94-882, § 5; 96-11, § 5; 2021 P.A. 102-232, § 5, effective January 1, 2022; 2021 P.A. 102-669, § 940, effective November 16, 2021.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 756.

Section 997 of P.A. 92-651 is a "no acceleration or delay" provision, and Section 998 is a "no revival or extension" provision.

Amendment Notes

The 1999 amendment by P.A. 91-485, effective January 1, 2000, in subsection (b) inserted "and parts" in the first sentence, inserted the fourth sentence, and inserted "reasonable" before "documentation" near the end; and added subsections (c) through (f).

The 2001 Amendment by P.A. 92-498, effective December 12, 2001, added subsection (g).

The 2002 amendment by P.A. 92-651, effective July 11, 2002, inserted "of" following "copy" near the end of the first sentence of subsection (g)(3).

The 2006 amendment by P.A. 94-882, effective June 20, 2006, added the last sentence in (g)(2)(A); and added (g)(3.1) and (g)(6).

The 2009 amendment by P.A. 96-11, effective May 22, 2009, substituted “a period of one year after the date the claim was paid or credit issued by the manufacturer or franchiser” for “a period of 18 months after the date of the transactions that are subject to audit by the franchiser” in the next-to-last sentence of (b).

The 2021 amendment by P.A. 102-232, effective January 1 2022, rewrote (b); in (e), deleted “not” preceding “apply to entire” and deleted the former last sentence, which read: “In the case of those assemblies, the motor vehicle franchiser shall reimburse the motor vehicle franchisee in the amount of 30% of what the motor vehicle franchisee would have paid the motor vehicle franchiser for the assembly if the assembly had not been supplied by the franchiser other than by the sale of that assembly to the motor vehicle franchisee”; and deleted the former text of (g).

The 2021 amendment by P.A. 102-669, effective November 16, 2021, made no change.

CASE NOTES

Surcharge Improper

Warranty Agreement

—Parts Reimbursement

Surcharge Improper

Vehicle manufacturer could not impose a warranty cost recovery surcharge on its dealers because it did not have a written agreement in place with the majority of its dealers, although it otherwise reimbursed its dealers properly. Moreover, there was no impermissible retroactivity or impairment of contract because the manufacturer had no contractual right to impose the surcharge, and there was no dormant Commerce Clause violation absent an improper burden. Nissan N. Am., Inc. v. Motor Vehicle Review Bd., 2014 IL App (1st) 123795, 379 Ill. Dec. 599, 7 N.E.3d 25, 2014 Ill. App. LEXIS 93 (Ill. App. Ct. 1st Dist. 2014).

Warranty Agreement

—Parts Reimbursement

The purpose of the 1992 amendment was solely to regulate compensation for the labor component of warranty work; there is no indication that the legislature intended to do anything about parts reimbursement. Kronon Motor Sales v. Ford Motor Co., 41 F.3d 338, 1994 U.S. App. LEXIS 33700 (7th Cir. Ill. 1994).

Research References & Practice Aids

Research References and Practice Aids

Validity, construction and effect of state motor vehicle warranty legislation. 88 301.

815 ILCS 710/7

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/7 Unreasonable dealer or franchise restrictions.

It shall be unlawful directly or indirectly to impose unreasonable restrictions on the motor vehicle dealer or franchisee relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, site-control (whether by sublease, collateral pledge of lease, or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

History

P.A. 81-43.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 757.

CASE NOTES

Legislative Intent

Site Control

—In General

—Violation

Legislative Intent

The legislature did not intend that restrictions effecting site control would be considered unreasonable and prohibited only when found in a lease. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

Site Control

—In General

Trial court properly granted the manufacturer's motion for a judgment on the pleadings because the 2001 addendum to the parties' franchise agreement and the provision for issuing future addenda did not offend the Motor Vehicle Franchise Act, 815 ILCS 710/1 through 32, where it was not against the law or public policy for a dealer to enter into a contract with a manufacturer to buy a specified number of trucks, parts, and tools and to employ a specified number of personnel; once a dealer had freely entered into such a contract, it was not coercion to demand that the dealer perform it, and the 2001 addendum was not a unilateral modification because it was actually part of the agreement that the dealer signed. Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 341 Ill. App. 3d 438, 275 Ill. Dec. 257, 792 N.E.2d 488, 2003 Ill. App. LEXIS 863 (Ill. App. Ct. 4th Dist. 2003).

The prohibition against site control in this Act protects the franchisee/dealer from being subjected to unreasonable control by the franchisor; there is no difference between termination of a lease because of a dealer's failure to exclusively sell the manufacturer's products and termination of a franchise for the same reason. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

—Violation

A site control provision in a franchise agreement will not be considered as a prima facie violation; it is only when a manufacturer unreasonably applies such a provision that a violation of this Act will be found. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

815 ILCS 710/8

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/8 Agreements applicable.

The provisions of this Act shall apply to all written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest.

History

P.A. 81-43.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 758.

815 ILCS 710/9

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/9 Renewals; transfers.

(a) Anything to the contrary notwithstanding, it shall be unlawful for the manufacturer, wholesaler, distributor or franchiser without good cause, to fail to renew a franchise on terms then equally available to all its motor vehicle dealers, or to terminate a franchise or restrict the transfer of a franchise until the franchisee shall receive fair and reasonable compensation for the value of the business and business premises.

(b) For the purposes of this Section 9 [815 ILCS 710/9], the term "reasonable compensation" includes, but is not limited to all of the following items:

(1) An amount equal to the current, fair rental value of the portion of the motor vehicle dealer's established place of business that is used for motor vehicle sales and service with the manufacturer, wholesaler, distributor or franchiser for a period of one year beginning on the date of the nonrenewal, termination, or restriction on the transfer of the franchise.

(2) The franchisee's cost of each new undamaged and unsold current and prior year motor vehicles that were acquired within 12 months of termination and have 500 or fewer miles recorded on the odometer that are in the franchisee's inventory at the time of nonrenewal, termination, or restriction and that were purchased or acquired from the manufacturer or from another dealer of the same line make in the ordinary course of business.

(3) The franchisee's cost of each new, unused, undamaged, and unsold part or accessory that is in the current parts catalogue or is identical to a part or accessory in the current parts catalogue except for the number assigned to the part or accessory due to a change in the number after the purchase of the part or accessory and that is still in the original, resalable merchandising package and in an unbroken lot, except that, in the case of sheet metal, a comparable substitute for the original package may be used if the part or accessory was purchased (i) directly from the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof or (ii) from an outgoing authorized dealer as a part of the dealer's initial inventory.

(4) The fair market value of each undamaged sign owned by the dealer that bears a trademark or trade name used or claimed by the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof that was purchased as a requirement of the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof.

(5) The fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that (i) were recommended in writing and designated as special tools and equipment, (ii) were purchased at the request of the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof, and (iii) are in usable and good condition except for reasonable wear and tear.

(6) The cost of transporting, handling, packing, storing, and loading any property that is subject to repurchase under this Section.

This subsection (b) shall not apply to a non-renewal or termination that is implemented as a result of a sale of the assets or stock of the franchise.

(c) The payment under item (b)(1) is due in 12 equal, monthly installments, beginning 30 days after the franchise is terminated or nonrenewed. The payments under items (b)(2) through (b)(6) are due no later than 90 days after the franchise is terminated or nonrenewed. As a condition of payment under items (b)(2) through (b)(6), the motor vehicle dealer must comply with all reasonable requirements provided by the manufacturer, distributor, or wholesaler regarding the return of inventory.

If a manufacturer, distributor, or wholesaler does not reimburse the motor vehicle dealer for the amounts required under items (b)(2) through (b)(6) by the deadlines under this subsection (c), and the Board or, if agreed to under Section 12 [815 ILCS 710/12], the arbitrator, finds the manufacturer, distributor, or wholesaler in violation of this subsection, then the manufacturer, distributor, or wholesaler shall, in addition to any other amounts due, pay the motor vehicle dealer:

(1) interest on the amount due at a rate reasonable in light of commercial practices, determined by the Board or arbitrator; and

(2) reasonable attorney's fees and costs.

History

P.A. 83-922; 96-11, § 5; 96-1000, § 680.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 759.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Amendment Notes

The 2009 amendment by P.A. 96-11, effective May 22, 2009, added the (a) designation, and added (b) and (c).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, deleted former (c)(3), which read: "reasonable attorney's fees and costs."

CASE NOTES

Failure to state a claim

Allegations in two of the counts were nothing more than conclusions without specific facts in support of the motor vehicle dealer's claims that the corporation and the subsidiary failed to renew its franchise on terms equally available to other dealers. The exhibits mentioned in the dealer's brief on the issue failed to shine a light on the conclusory allegations; therefore, the motor vehicle dealer failed to state a cause of action under 815 ILCS 710/9(a) (2008). Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 406 Ill. App. 3d 325, 348 Ill. Dec. 38, 943 N.E.2d 646, 2010 Ill. App. LEXIS 1268 (Ill. App. Ct. 4th Dist. 2010), aff'd, 2011 IL 111611, 355 Ill. Dec. 400, 959 N.E.2d 1133, 2011 Ill. LEXIS 1837 (Ill. 2011).

815 ILCS 710/9

End of Document

815 ILCS 710/9.5

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

815 ILCS 710/9.5 Termination with good cause.

(a) Anything to the contrary notwithstanding, if a manufacturer, wholesaler, distributor, or franchiser, with good cause, (i) fails to renew a franchise on terms then equally available to all of its motor vehicle dealers, (ii) terminates a franchise, or (iii) restricts the transfer of a franchise, the manufacturer, wholesaler, distributor or franchiser shall pay to the franchisee all of the following, including, but not limited to:

(1) Upon termination, cancellation, or nonrenewal of a line make or upon termination, cancellation, or nonrenewal due to a dealer's poor sales and service performance pursuant to notice provided under Section 4(d)(6) [815 ILCS 710/4], an amount equal to the current, fair rental value of the portion of the motor vehicle dealer's established place of business that is used for motor vehicle sales and service with the manufacturer, wholesaler, distributor or franchiser for a period of one year beginning on the date of the nonrenewal, termination, or restriction on the transfer of the franchise.

(2) The franchisee's cost of each new undamaged and unsold current and prior model year motor vehicles that were acquired within 12 months of termination and have 500 or fewer miles recorded on the odometer in the franchisee's inventory at the time of nonrenewal, termination, or restriction and that were purchased or acquired from the manufacturer or from another motor vehicle dealer of the same line make in the ordinary course of business.

(3) The franchisee's cost of each new, unused, undamaged, and unsold part or accessory that is in the current parts catalogue or is identical to a part or accessory in the current parts catalogue except for a number assigned to the part or accessory due to a change in the number after the purchase of the part or accessory and that is still in the original, resalable merchandising package and in an unbroken lot, except that, in the case of sheet metal, a comparable substitute for the original package may be used if the part or accessory was purchased (i) directly from the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof or (ii) from an outgoing authorized dealer as a part of the dealer's initial inventory.

(4) The fair market value of each undamaged sign owned by the dealer that bears a trademark or trade name used or claimed by the manufacturer, distributor, wholesaler, distributor branch, or division, or officer, agent, or other representative thereof that was purchased as a requirement of the manufacturer, distributor, wholesaler, distributor branch, or division, or officer, agent, or other representative thereof.

(5) The fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that (i) were recommended in writing and designated as special tools and equipment, (ii) were purchased at the request of the manufacturer, distributor, wholesaler, distributor branch or division, or officer, agent, or other representative thereof, and (iii) are in usable and good condition except for reasonable wear and tear.

(b) The payment under item (a)(1) is due in 12 equal, monthly installments, beginning 30 days after the franchise is terminated or nonrenewed. The payments under items (a)(2) through (a)(5) are due no later than 90 days after the franchise is terminated or nonrenewed. As a condition of payment under items (a)(2) through (a)(5) the motor vehicle dealer must comply with all reasonable requirements provided by the manufacturer, distributor, or wholesaler regarding the return of inventory.

If a manufacturer, distributor, or wholesaler does not reimburse the motor vehicle dealer for the amounts required under items (a)(2) through (a)(6) by the deadlines under this subsection (b), then the manufacturer, distributor, or wholesaler shall, in addition to any amounts due, pay the motor vehicle dealer:

(1) interest on the amount due at a rate reasonable in light of commercial practices, determined by the Board or arbitrator; and

(2) reasonable attorney's fees and costs.

(c) This Section does not apply to a termination or nonrenewal that is implemented as a result of the sale of the assets or stock of the franchise.

History

P.A. 96-11, § 5.

Annotations

Notes

Effective Dates

Section 99 of P.A. 96-11 makes this section effective upon becoming law. The Act was approved. May 22, 2009.

CASE NOTES

Failure to State Claim

Although the dealer alleged the termination or nonrenewal of the franchise occurring after May 22, 2009, even with good cause, entitled the dealer to damages under 815 ILCS 710/9.5(a) (2009), the dealer failed to state a cause of action under 815 ILCS 710/9.5 because the sales and service agreement remained in effect and had not been terminated, and the subsidiary offered an extension of the agreement until December 31, 2012. The dealer's alternative claim that the future termination or failure to renew would not be on terms equally available to other dealers was conclusory in nature and did not state sufficient facts to state a cause of action. Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 406 Ill. App. 3d 325, 348 Ill. Dec. 38, 943 N.E.2d 646, 2010 Ill. App. LEXIS 1268 (Ill. App. Ct. 4th Dist. 2010), aff'd, 2011 IL 111611, 355 Ill. Dec. 400, 959 N.E.2d 1133, 2011 Ill. LEXIS 1837 (Ill. 2011).

815 ILCS 710/10

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/10 Free association.

Every franchisee shall have the right of free association with other franchisees for any lawful purpose.

History

P.A. 81-43.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 760.

815 ILCS 710/10.1

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/10.1 [Motorcycle defined; Motorcycle Franchises; prohibited practices]

(a) As used in this Section, "motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel with 3 or less wheels in contact with the ground, excluding farm, garden, and lawn equipment, and including off-highway vehicles.

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

(1) To require a motorcycle franchisee to participate in a retail financing plan or retail leasing plan or to participate in any retail consumer insurance plan.

(2) To own, to operate or to control any motorcycle dealership in this State for a period longer than 2 years.

(3) (Blank).

(4) To require a motorcycle dealer to utilize manufacturer approved floor fixtures for the display of any product that is not a product of the manufacturer.

(5) To require a motorcycle dealer to purchase lighting fixtures that are to be installed in the dealership only from the manufacturer's approved vendors.

(6) To require a motorcycle dealer to relocate to a new or alternate facility.

Whenever any motorcycle dealer enters into a franchise agreement, evidenced by a contract, with a wholesaler, manufacturer, or distributor wherein the franchisee agrees to maintain an inventory and the contract is terminated by the wholesaler, manufacturer, distributor, or franchisee, then the franchisee may require the repurchase of the inventory as provided for in this Act. If the franchisee has any outstanding debts to the wholesaler, manufacturer, or distributor, then the repurchase amount may be credited to the franchisee's account. The franchise agreement shall either expressly or by operation of law have as part of its terms a security agreement whereby the wholesaler, manufacturer, or distributor agrees to and does grant a security interest to the motorcycle dealer in the repurchased inventory to secure payment of the repurchase amount to the dealer. The perfection, priority, and other matters relating to the security interest shall be governed by Article 9 of the Uniform Commercial Code [810 ILCS 5/9-101 et seq.]. The provisions of this Section shall not be construed to affect in any way any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the motorcycle dealer.

(c) The provisions of this Section 10.1 [815 ILCS 710/10.1] are applicable to all new or existing motorcycle franchisees and franchisers and are in addition to the other rights and remedies provided in this Act, and, in the case of a conflict with other provisions contained in this Act, with respect to motorcycle franchises, this Section shall be controlling.

(d) The filing of a timely protest by a motorcycle franchise before the Motor Vehicle Review Board as prescribed by Sections 12 and 29 of this Act [815 ILCS 710/12 and 815 ILCS 710/29], shall stay the effective date of a proposed additional franchise or selling agreement, or the effective date of a proposed motorcycle dealership relocation, or the effective date of a cancellation, termination, or modification, or

extend the expiration date of a franchise or selling agreement by refusal to honor succession to ownership or refusal to approve a sale or transfer pending a final determination of the issues in the hearing.

History

P.A. 84-885; 88-349, § 5; 91-142, § 5; 98-424, § 5; 2018 P.A. 100-863, § 680, effective August 14, 2018.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 760.1.

Amendment Notes

The 1999 amendment by P.A. 91-142, effective July 16, 1999, added subsection (d).

The 2013 amendment by P.A. 98-424, effective January 1, 2014, added (b)(4) through (b)(6).

The 2018 revisory amendment by P.A. 100-863, effective August 14, 2018, redesignated former (b)(3) as the second paragraph of (b); and made stylistic changes.

CASE NOTES

Motorcycle

Considering the plain and unambiguous language of the Illinois Motor Vehicle Franchise Act, its legislative history, and the recently amended 815 ILCS 715/2(4) of the Illinois Equipment Fair Dealership Law, the Illinois Legislature intends 815 ILCS 710/10.1(a) to apply only to motorcycles and off-highway vehicles required to be registered under the Illinois Vehicle Code, 625 ILCS 5/1-100 et seq. Therefore, a dealer was unable to file a protest over a termination letter received from a manufacturer because the all-terrain vehicles and snowmobiles sold by the dealer did not fit within the definition of “motorcycles” in 815 ILCS 710/10.1(a). Scholl's 4 Season Motor Sports, Inc. v. Ill. Motor Vehicle Review Bd., 2011 IL App (1st) 102995, 354 Ill. Dec. 411, 957 N.E.2d 1204, 2011 Ill. App. LEXIS 979 (Ill. App. Ct. 1st Dist. 2011).

End of Document

815 ILCS 710/11

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

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815 ILCS 710/11 Refunds; discounts.

In connection with a sale of a motor vehicle or vehicles to the State or to any political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers available to all other of its dealers within the relevant market area.

History

P.A. 81-43.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 761.

815 ILCS 710/12

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

815 ILCS 710/12 Arbitration; administrative proceedings; civil actions; determining good cause.

(a) The franchiser and franchisee may agree to submit a dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11 [815 ILCS 710/4, 815 ILCS 710/5, 815 ILCS 710/6, 815 ILCS 710/7, 815 ILCS 710/9, 815 ILCS 710/10.1, 815 ILCS 710/11] to arbitration. Any such proceeding shall be conducted under the provisions of the Uniform Arbitration Act by a 3 member panel composed of one member appointed by the franchisee and one member appointed by the franchiser who together shall choose the third member.

An arbitration proceeding hereunder for a remedy under paragraph (6) of subsection (d) or paragraph (6), (8), (10) or (11) of subsection (e) of Section 4 of this Act shall be commenced by written notice to the franchiser by the objecting franchisee within 30 days from the date the dealer received notice to cancel, terminate, modify or not extend or renew an existing franchise or selling agreement or refusal to honor succession to ownership or refusal to honor a sale or transfer or to grant or enter into the additional franchise or selling agreement, or to relocate an existing motor vehicle dealer; or within 60 days of the date the franchisee received notice in writing by the franchiser of its determination under any provision of Section 4 (other than paragraph (6) of subsection (d) or paragraph (6), (8), (10) or (11) of subsection (e) of Section 4), 5, 6, 7, 9, 10.1, or 11 of this Act; however, if notice of the provision under which the determination has been made is not given by the franchiser, then the proceeding shall be commenced as provided by Section 14 of this Act [815 ILCS 710/14].

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

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

(b) If the franchiser and the franchisee have not agreed to submit a dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11 of this Act to arbitration under subsection (a), then a proceeding before the Motor Vehicle Review Board as prescribed by subsection (c) or (d) of Section 12 and Section 29 of this Act [815 ILCS 710/29] for a remedy other than damages under paragraph (6) of subsection (d) or paragraph (6), (8), (10), or (11) of subsection (e) of Section 4 of this Act shall be commenced upon receipt by the Motor Vehicle Review Board of a timely notice of protest or within 60 days of the date the franchisee received notice in writing by the franchiser of its determination under any provision of those Sections other than paragraph (6) of subsection (d) or paragraph (6), (8), (10), or (11) of subsection (e) of Section 4 of this Act; however, if notice of the provision under which the determination has been made is not given by the franchiser, then the proceeding shall be commenced as provided by Section 14 of this Act.

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

(c) In proceedings under (a) or (b), when determining whether good cause has been established for granting such proposed additional franchise or selling agreement, or for relocating an existing motor vehicle dealership, the arbitrators or Board shall consider all relevant circumstances in accordance with subsection (v) of Section 2 of this Act [815 ILCS 710/2], including but not limited to:

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

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

(3) the investment necessarily made and obligations incurred by the objecting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or the relocated motor vehicle dealership to perform their obligations under existing franchises or selling agreements; and, the manufacturer shall give reasonable credit for sales of factory repurchase vehicles purchased by the objecting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with the place of business in the relevant market area to be served by the additional franchise or the relocated motor vehicle dealership, or the additional motor vehicle dealership or other facility limited to the sale of factory repurchase or late model vehicles, at manufacturer authorized or sponsored auctions in determining performance of obligations under existing franchises or selling agreements relating to total new vehicle sales;

(4) the permanency of the investment of the objecting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or the relocated motor vehicle dealership;

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

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

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

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

(9) whether there has been a material breach by a motor vehicle dealer of the existing franchise agreement which creates a substantially detrimental effect upon the distribution of the franchiser's motor vehicles in the affected motor vehicle dealer's relevant market area or fraudulent claims for warranty work, insolvency or inability to pay debts as they mature;

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

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

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

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

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

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

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

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

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

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

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

(9) The extent to which local market factors in the dealer's market area presented by the dealer impacted the dealer's performance.

(e) If the franchiser and the franchisee have not agreed to submit a dispute to arbitration, and the dispute did not arise under paragraph (6) of subsection (d) or paragraph (6), (8), (10), or (11) of subsection (e) of Section 4 of this Act, then a proceeding for a remedy other than damages may be commenced by the objecting franchisee in the circuit court of the county in which the objecting franchisee has its principal place of business, within 60 days of the date the franchisee received notice in writing by the franchiser of its determination under any provision of this Act other than paragraph (6) of subsection (d) or paragraph (6), (8), (10), or (11) of subsection (e) of Section 4 of this Act; however, if notice of the provision under which the determination has been made is not given by the franchiser, then the proceeding shall be commenced as provided by Section 14 of this Act.

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

History

P.A. 87-625; 89-145, § 15; 92-272, § 5; 2017 P.A. 100-308, § 5, effective August 24, 2017.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 762.

Amendment Notes

The 1995 amendment by P.A. 89-145, effective July 14, 1995, in the section catchline inserted “administrative proceedings”; in subsection (a), in the first paragraph, in the first sentence, inserted “or refusal to honor succession to ownership or refusal to allow a sale or transfer”, in the second paragraph inserted “or refusal to honor succession to ownership or refusal to honor a sale or transfer” and in the fourth paragraph, in the first sentence, inserted “or refusal to honor succession or refusal to allow a sale or transfer”; in subsection (b), in the first paragraph, inserted “or refusal to honor succession to ownership or refusal to allow a sale or transfer” and substituted “upon receipt of a timely notice of protest under paragraph (6) of subsection (d) or paragraph (6), (8), or (10) of subsection (e) of Section 4 of this Act, before the Motor Vehicle Review Board as prescribed by Sections 12 and 29 of this Act” for “by the objecting franchisee in the Circuit Court of the County in which the objecting franchisee has its principal place of business, within 60 days of the date the franchisee received notice of cancellation, termination, or refusal to extend or renew an existing franchise or selling agreement or the granting of an additional franchise of the same line make within the relevant market area or the relocating of an existing motor vehicle dealership at a location within or into a relevant market where the same line make of motor vehicle is then represented” and added the second paragraph; in subsection (c), in the introductory paragraph, deleted “or for cancelling, terminating, refusing to extend or renew or changing or modifying the obligations of the motor vehicle dealer as a condition to offering a renewal, replacement or succeeding franchise or selling agreement” preceding “the arbitrators”, substituted “Board” for “court”, substituted “relevant” for “pertinent”, substituted “in accordance with subsection (v) of Section 2 of this Act, including” for “which may include” and deleted ‘’are” preceding “not limited”; in subdivision (c)(1) substituted “is” for “appears to be”; in subdivision (c)(5) deleted “or for the franchise or selling agreement of the affected motor vehicle dealer to expire, to be modified or to be terminated or be replaced” from the end; in subdivision (c)(8) deleted “termination of an existing franchise or the” preceding “establishment”; and added subsections (d) and (e).

The 2001 amendment by P.A. 92-272, effective January 1, 2002, in the first paragraph of subsection (a), substituted “Section 4, 5, 6, 7, 9, 10.1, or 11” for “cancellation, modification, termination, or refusal to extend or renew an existing franchise or selling agreement, or refusal to honor succession to ownership or refusal to allow a sale or transfer, or the granting of an additional franchise of the same line make or the relocating of an existing motor vehicle dealership within or into a relevant market area where the same line make is then represented, or the proposed arrangement to establish any additional motor vehicle dealership or other facility limited to the sale of factory repurchase vehicles or late model vehicles”; in the second paragraph of subsection (a), inserted “for a remedy under paragraph (6) of subsection (d) or paragraph (6), (8), (10) or (11) of subsection (e) of Section 4 of this Act” and added the language beginning “or within 60 days of the date” through the end of the paragraph; rewrote the first paragraph of subsection (b) to such an extent that a detailed comparison would be impracticable; in subsection (e), inserted “or (11)” preceding “subsection (e)”, and substituted “paragraph (6) of subsection (d) or

paragraph (6), (8), (10), or (11) of subsection (e) of Section 4 of this Act; however, if notice of the provision under which the determination has been made is not given by the franchiser, then the proceeding shall be commenced as provided by Section 14 of this Act" for "the aforesaid Sections, or as otherwise prescribed by Section 13 of this Act"; added subsection (f); and made stylistic changes.

The 2017 amendment by P.A. 100-308, effective August 24, 2017, added (d)(9).

CASE NOTES

Constitutionality

Motor Vehicle Franchise Act survived constitutionality and Sherman Act, 15 U.S.C. §§ 1-7, challenges by auto manufacturer who had been found not to have good cause for granting additional franchises in urban areas already served by many franchises. The Act was reasonably clear as to the meaning of "good cause," the administrative process was carried out with as much dispatch as possible, the regulation did not unduly burden interstate commerce and fell squarely within the state action exemption from Sherman Act coverage, and bore a rational relationship to the legitimate state end of preventing manufacturers from exercising their disparate economic power over dealers so that the Act was not a prohibited special law. GMC v. State Motor Vehicle Review Bd., 361 Ill. App. 3d 271, 297 Ill. Dec. 172, 836 N.E.2d 903, 2005 Ill. App. LEXIS 1028 (Ill. App. Ct. 4th Dist. 2005), aff'd, 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (Ill. 2007).

—Subsection (c)

The investigation into and weighing of the statutory and nonstatutory factors in order to decide whether a dealership should be established or relocated, and what the public interest and welfare is in each case involving a proposed dealership, are not functions which courts are equipped to perform nor which the legislature may constitutionally require them to perform; the circuit court judgments holding unconstitutional subsection (c) of this section and 815 ILCS 710/4(e)(8) were affirmed by the Fields Jeep-Eagle v. Chrysler Corp., 163 Ill. 2d 462, 206 Ill. Dec. 694, 645 N.E.2d 946, 1994 Ill. LEXIS 170 (Ill. 1994).

Application

In Fifth Amendment takings action by car dealers whose franchise agreements were rejected when automobile manufacturer went into bankruptcy, court entered findings in favor of United States because car dealers failed to establish government coerced manufacturer into filing for bankruptcy under government's negotiated bankruptcy terms or into rejecting any franchise agreements. Because evidence established that manufacturer would have faced immediate liquidation in Chapter 7 bankruptcy without government assistance, dealers failed to prove franchise agreements would have had value in "but-for world" without government assistance. Thus, dealers failed to prove property was "taken" from them. Colonial Chevrolet Co. v. United States, No. 10-647C, 145 Fed. Cl. 243, 2019 U.S. Claims LEXIS 1311 (Fed. Cl. Oct. 2, 2019), aff'd, 841 Fed. Appx. 205, 2020 U.S. App. LEXIS 40691 (Fed. Cir. 2020).

Issues as to whether good cause existed to cancel or terminate a franchise or the refusal to extend the franchise were matters best left to the arbitrator or the Motor Vehicle Review Board under § 12(d) (815 ILCS 710/12(d) (2008)) of the Motor Vehicle Franchise Act and not the judiciary. As the circuit court did not have subject-matter jurisdiction over the 815 ILCS 710/4(d)(6) (2008) claims, the portions of the order dealing with those respective claims in the second-amended complaint were void and would not be addressed in the appeal. Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 406 Ill. App. 3d 325, 348 Ill. Dec. 38, 943 N.E.2d 646, 2010 Ill. App. LEXIS 1268 (Ill. App. Ct. 4th Dist. 2010), aff'd, 2011 IL 111611, 355 Ill. Dec. 400, 959 N.E.2d 1133, 2011 Ill. LEXIS 1837 (Ill. 2011).

Decision by the State of Illinois Motor Vehicle Review Board to grant existing car dealerships' protests was supported by testimony that the existing dealerships had made substantial investments in their dealerships, the existing dealerships had adequate sales and service facilities, and the fact that there was no evidence that the existing dealerships had materially breached their franchise agreements. GMC v. State Motor Vehicle Review Bd., 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (Ill. 2007).

Illinois State Motor Vehicle Board appropriately determined the issue of good cause for a manufacturer's efforts to establish new dealership franchises in two areas according to standards of commercial reasonableness, weighing many factors against the existing franchise holders' interest in protection against unreasonable competition within an area. GMC v. State Motor Vehicle Review Bd., 361 Ill. App. 3d 271, 297 Ill. Dec. 172, 836 N.E.2d 903, 2005 Ill. App. LEXIS 1028 (Ill. App. Ct. 4th Dist. 2005), aff'd, 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (Ill. 2007).

Cause of Action

—Accrual

A cause of action under this Act accrues when an existing franchisee receives notice of a proposed relocation, and the relative rights of the parties must be determined as of the date the cause of action accrued. Velde Ford Sales, Inc. v. John Bearce Ford, Inc., 201 Ill. App. 3d 866, 147 Ill. Dec. 327, 559 N.E.2d 500, 1990 Ill. App. LEXIS 1172 (Ill. App. Ct. 3d Dist. 1990).

Construction

Mediation clause in an agreement between an automobile manufacturer and a dealer put greater limitations on the dealer's access to remedies than the statute did; therefore, Illinois courts could proceed to consider the retroactive application of the Illinois Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq. to the parties' agreement, and found no constitutional violation, since although certain statutory factors could not be applied retroactively, the pre-existing law had always allowed the Illinois Motor Vehicle Review Board to consider whether an agreement had been terminated for good cause. Ford Motor Co. v. Motor Vehicle Review Bd., 338 Ill. App. 3d 880, 272 Ill. Dec. 883, 788 N.E.2d 187, 2003 Ill. App. LEXIS 354 (Ill. App. Ct. 1st Dist. 2003).

Expert Evidence

Motor Vehicle Review Board's determinations that an auto manufacturer's product segment analysis was flawed because it did not take into account the difficulty existing dealerships had obtaining sufficient numbers of sports utility vehicles and that there were distribution differences between urban and rural areas were not against the manifest weight of the evidence, as they were based on considerable expert and statistical evidence that the manufacturer had failed to counterbalance. GMC v. State Motor Vehicle Review Bd., 361 Ill. App. 3d 271, 297 Ill. Dec. 172, 836 N.E.2d 903, 2005 Ill. App. LEXIS 1028 (Ill. App. Ct. 4th Dist. 2005), aff'd, 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (Ill. 2007).

Market Area

—Lack of Description

Where a contract failed to provide a description of the market area of plaintiff's dealership and where prior to 1983 amendments, it had been held that the scope of the relevant market area was limited to that area described in the franchise agreement, and if none was specified, none existed; thus, notwithstanding a disagreement between the parties over who was responsible for obtaining or providing a statement of market scope, defendant had a vested contractual right under the 1983 contract to establish a new dealership in proximity to plaintiff, and since defendant exercised this right prior to the expiration of that contract, plaintiff had no remedy under this Act. Ace Cycle World, Inc. v. American Honda Motor Co., 788 F.2d 1225, 1986 U.S. App. LEXIS 24113 (7th Cir. Ill. 1986).

Retroactive Application

Purpose of applying 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c), prospectively is to protect the vested contract rights of the parties to vehicle dealer franchise agreements, and distinguishing between franchisees who entered franchise agreements prior to the 1995 amendments to the Illinois Motor Vehicle Franchise Act and franchisees who entered franchise agreements after the 1995 amendments to the Act is rationally related to that purpose. Thus, the prospective application of 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c) does not violate equal protection principles. Yakubinis v. Yamaha Motor Corp., U.S.A., 365 Ill. App. 3d 128, 301 Ill. Dec. 542, 847 N.E.2d 552, 2006 Ill. App. LEXIS 185 (Ill. App. Ct. 1st Dist. 2006).

1995 versions of 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c) created new substantive rights in vehicle dealer franchisees to protest the creation of new or the relocation of old franchises into their relevant market territories absent a showing of good cause. Thus, the statutes could not be applied retroactively to pre-1995 vehicle dealer franchise agreements, and as prior versions of the statutes had been ruled unconstitutional and were void ab initio, the statutory sections could not be used by a 1989 franchisee to protest the relocation of another franchise into his relevant market area. Yakubinis v. Yamaha Motor Corp., U.S.A., 365 Ill. App. 3d 128, 301 Ill. Dec. 542, 847 N.E.2d 552, 2006 Ill. App. LEXIS 185 (Ill. App. Ct. 1st Dist. 2006).

—Not Permitted

This Act will not be applied retroactively; application of the Act to a franchise agreement that preexisted the Act is retroactive and thus an impermissible burden on vested contractual rights. Ace Cycle World, Inc. v. American Honda Motor Co., 788 F.2d 1225, 1986 U.S. App. LEXIS 24113 (7th Cir. Ill. 1986).

End of Document

815 ILCS 710/13

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

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815 ILCS 710/13 Damages; equitable relief.

Any franchisee or motor vehicle dealer who suffers any loss of money or property, real or personal, as a result of the use or employment by a manufacturer, wholesaler, distributor, distributor branch or division, factory branch or division, wholesale branch or division, or any agent, servant or employee thereof, of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by this Act, or any action in violation of this Act, may bring an action for damages and equitable relief, including injunctive relief, in the circuit court of the county in which the objecting franchisee has its principal place of business or, if the parties have so agreed, in arbitration. If the misconduct is willful or wanton, treble damages may be awarded. A motor vehicle dealer, if it has not suffered any loss of money or property, may obtain permanent equitable relief if it can be shown that the unfair act or practice may have the effect of causing such loss of money or property. Where the franchisee or dealer substantially prevails the court or arbitration panel or Motor Vehicle Review Board shall award attorney's fees and assess costs, including expert witness fees and other expenses incurred by the dealer in the litigation, so long as such fees and costs are reasonable, against the opposing party. Moreover, for the purposes of the award of attorney's fees, expert witness fees, and costs whenever the franchisee or dealer is seeking injunctive or other relief, the franchisee or dealer may be considered to have prevailed when a judgment is entered in its favor, when a final administrative decision is entered in its favor and affirmed, if subject to judicial review, when a consent order is entered into, or when the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division, or any officer, agent or other representative thereof ceases the conduct, act or practice which is alleged to be in violation of any Section of this Act.

The changes to this Section made by this amendatory Act of the 92nd General Assembly [P.A. 92-272] (i) apply only to causes of action accruing on or after its effective date and (ii) are intended to provide only an additional venue for dispute resolution without changing any substantive rights under this Act.

History

P.A. 84-551; 89-145, § 15; 91-485, § 5; 91-533, § 55; 92-272, § 5.

Annotations

Notes

Editor's Notes

This section was Ill.Rev.Stat., Ch. 121 1/2, ¶ 763.

P.A. 91-533 § 990 contains a "no acceleration or delay" provision, and P.A. 91-533 § 995 contains a "no revival or extension" provision.

Amendment Notes

The 1995 amendment by P.A. 89-145, effective July 14, 1995, in the fourth sentence, inserted “or Motor Vehicle Review Board”; and in the fifth sentence inserted “when a final administrative decision is entered in its favor and affirmed, if subject to judicial review”.

The 1999 amendment by P.A. 91-485, effective January 1, 2000, inserted “including expert witness fees and other expenses incurred by the dealer in the litigation, so long as such fees and costs are reasonable” in the fourth sentence, and in the fifth sentence inserted “expert witness fees”, and substituted “factory” for “factor”.

The 1999 amendment by P.A. 91-533, effective August 13, 1999, substituted “factory” for “factor” in the last sentence.

The 2001 amendment by P.A. 92-272, effective January 1, 2002, combined the amendments by P.A. 91-485 and P.A. 91-533; in the first sentence of the first paragraph inserted “or any action in violation of this Act” preceding “may bring”, and added “in the circuit court of the county in which the objecting franchisee has its principal place of business or, if the parties have so agreed, in arbitration”; substituted the present second sentence for the former, which read: “Where the misconduct is willful or wanton, the court may award treble damages”; added the second paragraph; and made stylistic changes.

CASE NOTES

Attorney Fees

An award of attorneys’ fees was proper, notwithstanding that the plaintiff sought damages of $1.2 million and was only awarded $137,000 by the jury and that the award for attorneys’ fees was almost three times the damages awarded by the jury. Tuf Racing Prods., Inc. v. American Suzuki Motor Corp., 223 F.3d 585, 2000 U.S. App. LEXIS 17728 (7th Cir. Ill. 2000).

Damages

—Not Limited

There is no suggestion made in this Act that the legislature intended to limit damages, equitable relief, and treble damages to actions described in 815 ILCS 710/4. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

—Trebled

The power to award treble damages is permissive, not mandatory, on the part of the court. Kawasaki Shop of Aurora, Inc. v. Kawasaki Motors Corp., U.S.A., 188 Ill. App. 3d 664, 136 Ill. Dec. 4, 544 N.E.2d 457, 1989 Ill. App. LEXIS 1442 (Ill. App. Ct. 2d Dist. 1989).

Prerequisites

The traditional common-law requirements of irreparable injury and inadequacy of legal remedies must be satisfied before injunctive relief will issue under this section. Postma v. Jack Brown Buick, 157 Ill. 2d 391, 193 Ill. Dec. 166, 626 N.E.2d 199, 1993 Ill. LEXIS 101 (Ill. 1993).

815 ILCS 710/29

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

815 ILCS 710/29 Procedures for hearing on protest

Upon receipt of a timely notice of protest filed with the Motor Vehicle Review Board under Section 4, 5, 6, 7, 9, 10.1, 11, or 12 of this Act [815 ILCS 710/4, 815 ILCS 710/5, 815 ILCS 710/6, 815 ILCS 710/7, 815 ILCS 710/9, 815 ILCS 710/10.1, 815 ILCS 710/11, or 815 ILCS 710/12] the Motor Vehicle Review Board shall enter an order fixing a date (within 60 days of the date of the order), time, the place of a hearing and send by certified mail, return receipt requested, a copy of the order to the manufacturer and the objecting dealer or dealers. Subject to Section 10-20 of the Illinois Administrative Procedure Act, the Board shall designate a hearing officer who shall conduct the hearing. All administrative hearing officers shall be attorneys licensed to practice law in this State.

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

Upon any hearing, the Board or its duly authorized agent, the hearing officer, may administer oaths to witnesses and issue subpoenas for the attendance of witnesses or other persons and the production of relevant documents, records, and other evidence and may require examination thereon. For purposes of discovery, the Board or its designated hearing officer may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in such discovery procedures as are provided for in civil actions in Section 2-1003 of the Code of Civil Procedure [735 ILCS 5/2-1003]. Discovery shall be completed no later than 15 days prior to commencement of the proceeding or hearing. Enforcement of discovery procedures shall be as provided in the regulations. Subpoenas issued shall be served in the same manner as subpoenas issued out of the circuit courts. The fees of subpoenaed witnesses under this Act for attendance and travel shall be the same as fees of witnesses before the circuit courts of this State, such fees to be paid when the witness is excused from further attendance, provided the witness is subpoenaed at the instance of the Board or an agent authorized by the Board; and payment of fees shall be made and audited in the same manner as other expenses of the Board. Whenever a subpoena is issued at the request of a party to a proceeding, complainant, or respondent, as the case may be, the Board may require that the cost of service of the subpoena and the fee of same shall be borne by the party at whose instance the witness is summoned, and the Board shall have power, in its discretion, to require a deposit to cover the cost of service and witness fees and the payment of the legal witness fee and mileage to the witness served with the subpoena. In any protest before the Board, the Board or its designated hearing officer may order a mandatory settlement conference. The failure of a party to appear, to be prepared, or to have authority to settle the matter may result in any or all of the following:

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

(b) The Board or its designated hearing officer may dismiss the proceedings or any part thereof before the Board with or without prejudice.

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

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

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

In a hearing on a protest filed under paragraph (6) of subsection (d) or paragraph (6), (8), (10), or (11) of Section 4 or Section 12 of this Act [815 ILCS 710/12], the manufacturer shall have the burden of proof to establish that there is good cause for the franchiser to: grant or establish an additional franchise or relocate an existing franchise; cancel, terminate, refuse to extend or renew a franchise or selling agreement; or change or modify the obligations of the motor vehicle dealer as a condition to offering a renewal, replacement, or succeeding franchise or selling agreement or refuse to honor succession to ownership or refuse to approve a proposed transfer or sale. The determination whether good cause exists shall be made under Section 12 of this Act.

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

The changes to this Section made by this amendatory Act of the 92nd General Assembly [P.A. 92-272] (i) apply only to causes of action accruing on or after its effective date and (ii) are intended to provide only an additional venue for dispute resolution without changing any substantive rights under this Act.

History

P.A. 89-145, § 15; 89-433, § 10; 91-485, § 5; 92-272, § 5.

Annotations

Notes

Effective Dates

Section 20 of P.A. 89-145 made this section effective immediately. The Act was approved July 14, 1995.

Amendment Notes

The 1995 amendment by P.A. 89-433, effective December 15, 1995, in the fifth paragraph, in the first sentence, deleted from the beginning "The rules of evidence and privilege as applied in civil cases in the circuit courts of this

State shall be followed subject to the requirements of Section 10-40 of the Illinois Administrative Procedure Act and".

The 1999 amendment by P.A. 91-485, effective January 1, 2000, added the language beginning "which, if applicable" and ending "reasonable" in the last sentence of the third paragraph from the end.

The 2001 amendment by P.A. 92-272, effective January 1, 2002, in the first paragraph substituted "protest filed with the Motor Vehicle Review Board under Section 4, 5, 6, 7, 9, 10.1, 11, or 12 of this Act" for "protest under paragraph (6) of subsection (d) or paragraph (6), (8), or (10) of subsection (e) of Section 4 and Section 12 of this Act"; in the sixth paragraph inserted "or (11)" and made a related change in the first sentence; and added the final paragraph.

End of Document

815 ILCS 710/31

Statutes current with legislation through P.A. 102-787, of the 2022 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 815 BUSINESS TRANSACTIONS (§§ 5/1 — 730/99) > FRANCHISES (§§ 705/1 — 730/99) > Motor Vehicle Franchise Act (§§ 710/1 — 710/32)

815 ILCS 710/31 Review under Administrative Review Law; appeal as in civil cases.

Any person affected by a final administrative decision of the Board may seek judicial review of the decision in the Circuit Court of Sangamon County or in the Circuit Court of Cook County only under and in accordance with the Administrative Review Law [735 ILCS 5/3-101 et seq.], if the person files, within 10 days of receipt of service of a copy of the final decision sought to be reviewed, a written notice with the Board of intent to seek review under such law. The provisions of the Administrative Review Law and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Board under this Act. The term “administrative decision” is defined as in Section 3-101 of the Code of Civil Procedure.

History

P.A. 89-145, § 15.

Annotations

Notes

Effective Dates

Section 20 of P.A. 89-145 made this section effective immediately. The Act was approved July 14, 1995.