March 24, 1999

ENGROSSED
SENATE BILL No. 326

DIGEST OF SB 326 (Updated March 23, 1999 12:18 pm - DI 101)

Citations Affected: IC 9-23.

Synopsis: Motor vehicle franchises. Provides for transactions involving the transfer of a new motor vehicle franchise by a franchisee. Provides for manufacturer or distributor approval of the transferee. Gives manufacturers and distributors a right of first refusal to acquire a franchise under certain circumstances. Prohibits manufacturers and distributors from certain unfair practices regarding new motor vehicle dealers or franchisees.

Effective: July 1, 1999.

Meeks R

(HOUSE SPONSOR — COOK)

January 11, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
February 23, 1999, amended, reported favorably — Do Pass.
March 1, 1999, read second time, amended, ordered engrossed.
March 2, 1999, engrossed.
March 3, 1999, read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

March 8, 1999, read first time and referred to Committee on Commerce and Economic Development.
March 23, 1999, amended, reported — Do Pass.

March 24, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED SENATE BILL No. 326

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 9-23-3-22 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 22. (a) A dealer may not transfer, sell, or assign the business and assets of a dealership or an interest in the dealership to another person that contemplates or is conditioned upon a continuation of the franchise relationship with the manufacturer or distributor unless the dealer first:**

(1) notifies the manufacturer or distributor of the dealer's decision to make the transfer, assignment, or sale by written notice; and

(2) obtains the approval of the manufacturer or distributor.

The dealer must provide the manufacturer or distributor with completed application forms and related information generally used by the manufacturer or distributor to conduct its review of such a proposal, and a copy of all agreements regarding the proposed transfer, assignment, or sale.

(b) The manufacturer or distributor shall send a letter by

certified mail to the dealer within sixty (60) days of receipt of the information specified in subsection (a). The letter must indicate any disapproval of the transfer, assignment, or sale and must set forth the material reasons for the disapproval. If the manufacturer or distributor does not respond by letter within the sixty (60) day period, the manufacturer's or distributor's consent to the proposed transfer, assignment, or sale is considered to have been granted. A manufacturer or distributor may not unreasonably withhold approval of a transfer, assignment, or sale.

(c) A manufacturer or distributor has a right of first refusal as specified in the franchise agreement to acquire the new vehicle dealer's assets or ownership if there is a proposed change of more than fifty percent (50%) of the dealer's ownership or the transfer of more than fifty percent (50%) of the new vehicle dealer's assets if all of the following are met:

(1) The manufacturer or distributor notifies the dealer in writing of its intent to exercise its right of first refusal within the sixty (60) day notice limit provided in subsection (b).

(2) The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving consideration, terms, and conditions that are either the same as or better than those they have contracted to receive under the proposed change of more than fifty percent (50%) of the dealer's ownership or the transfer of more than fifty percent (50%) of the new vehicle dealer's assets.

(3) The proposed change of the dealership's ownership or the transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one (1) or more of the dealer's owners to any of the following:

(A) A designated family member or members including any of the following members of one (1) or more dealer owners:

(i) The spouse.

(ii) A child.

(iii) A grandchild.

(iv) The spouse of a child or a grandchild.

(v) A sibling.

(vi) A parent.

(B) A manager:

(i) employed by the dealer in the dealership during the previous four (4) years; and

(ii) who is otherwise qualified as a dealer operator.

(C) A partnership or corporation controlled by any of the family members described in clause (A).

(D) A trust arrangement established or to be established:

(i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or

(ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners.

(4) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney's fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of the dealer ownership or the transfer of the new vehicle dealer's assets. Payment of expenses and attorney's fees is not required if the dealer has failed to submit an accounting of those expenses within twenty (20) days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. An expense accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

(d) Violation of this section by the manufacturer or distributor is an unfair practice by a manufacturer or distributor.

SECTION 2. IC 9-23-3-23 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 23. It is an unfair practice for a manufacturer, distributor, officer, or agent to do any of the following:**

(1) Require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to:

(A) change location of the dealership;

(B) make any substantial alterations to the use of franchises; or

(C) make any substantial alterations to the dealership premises or facilities;

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business

considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements.

(2) Require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to divest its ownership of or management in another line make of motor vehicles that the dealer has established in its dealership facilities with the prior written approval of the manufacturer or distributor.

(3) Establish or acquire wholly or partially a franchisor owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable market area. A franchisor is not considered to be competing unfairly if operating:

(A) a business either temporarily for a reasonable period of time;

(B) in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price; or

(C) in a bona fide relationship in which an independent person or persons have made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership or managerial control of the business on reasonable terms and conditions.

COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 326, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, delete "the" and insert "**there is a**".

Page 1, line 7, delete "contemplates or is conditioned on a".

Page 1, delete line 8.

Page 1, line 9, delete "nonconditional franchisor,"

Page 2, line 1, after "by the franchisor" insert "**within thirty (30) days of written notice advising of the proposed transfer**".

Page 2, delete lines 7 through 14.

Page 2, line 15, delete "(e)" and insert "**(d)**".

Page 2, line 20, delete "the written notice advising of the proposed transfer" and insert "**all the information requested under subsection (b)**".

Page 2, line 21, delete "objective" and insert "**reasonable**".

Page 2, line 22, delete "the transferee" and insert "**the prospective transferee**".

Page 2, delete lines 24 through 42.

Page 3, delete line 1.

Page 3, line 2, delete "(g)" and insert "**(e)**".

Page 3, line 6, delete "(h)" and insert "**(f)**".

Page 3, between lines 9 and 10, begin a new paragraph and insert:

"**(g) A franchisor or distributor has a right of first refusal to acquire the new vehicle dealer's assets or ownership when there is a proposed change of more than fifty-one percent (51%) of the dealer's ownership, or the transfer of more than fifty-one percent (51%) of the new vehicle dealer's assets if all of the following are met:**

(1) The franchisor or distributor notifies the dealer in writing of its intent to exercise its right of first refusal within sixty (60) days of notice of the proposed transfer given under subsection (a).

(2) The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving consideration, terms, and conditions that either are the same as or better than those they have contracted to receive under the proposed change of more than fifty-one percent (51%) of the new vehicle dealer's ownership or the transfer of more than fifty-one percent (51%) of the dealer's assets.

(3) The proposed change of the new vehicle dealership's ownership or the transfer of the dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one (1) or more of the dealer's owners to:

(A) a designated family member or members including:

(i) the spouse;

(ii) a child;

(iii) a grandchild; or

(iv) the spouse of a child;

(B) a partnership or corporation controlled by any of the family members described in clause (A); or

(C) a trust arrangement established or to be established:

(i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the franchisor's or distributor's standards; or

(ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of death of the dealer or its principal owner or owners.

(4) Except as otherwise provided in this subdivision, the franchisor or distributor agrees to pay the reasonable expenses, including reasonable attorney's fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee before the franchisor's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of the new vehicle dealer ownership or the transfer of the dealer's assets. Payment of expenses and attorney's fees is not required if the dealer has failed to submit an accounting of those expenses within twenty (20) days of the dealer's receipt of the franchisor's or distributor's written request for such an accounting. An expense accounting may be requested by a franchisor or distributor before exercising its right of first refusal.".

Page 3, line 10, delete "(i)" and insert "**(h)**".

Page 3, after line 11, begin a new paragraph and insert:

"SECTION 2. IC 9-23-3-23 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 23. It is an unfair practice for a manufacturer, distributor, officer, or agent to require, coerce, or attempt to**

coerce any new motor vehicle dealer in Indiana to do either of the following:

(1) Refrain from participation in the management of, investment in, or acquisition of any other line of new vehicle or related products. This subdivision does not apply if all of the following apply:

(A) The new vehicle dealer maintains a reasonable line of credit for each make or line of new vehicle.

(B) The new vehicle dealer remains in compliance with the franchise agreement and any reasonable facilities requirements of the manufacturer or distributor. The reasonable facilities requirements may not include a requirement that an existing new vehicle dealer establish exclusive facilities, personnel, or display space, if such requirements or any of them, would:

(i) be unreasonable in light of economic conditions; and

(ii) not otherwise be justified by reasonable business considerations.

(C) A change is not made in the principal management of the new vehicle dealer.

This subdivision does not permit the addition of a line-make to the dealership facilities without the new motor vehicle dealer first requesting the written consent of the manufacturer or distributor.

(2) Establish or acquire wholly or partially a franchisor owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable market area. A franchisor is not considered to be competing unfairly if operating:

(A) a business either temporarily for a reasonable period of time;

(B) in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price; or

(C) in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership and managerial control of the business on reasonable terms and conditions.".

and when so amended that said bill do pass.

(Reference is to SB 326 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Mr. President: I move that Senate Bill 326 be amended to read as follows:

Page 1, line 3, delete "If there is a sale or transfer of:" and insert "**A dealer may not transfer, sell, or assign the business and assets of a dealership or an interest in the dealership to another person that contemplates or is conditioned upon a continuation of the franchise relationship with the manufacturer or distributor unless the dealer first:**

(1) notifies the manufacturer or distributor of the dealer's decision to make the transfer, assignment, or sale by written notice; and

(2) obtains the approval of the manufacturer or distributor.

The dealer must provide the manufacturer or distributor with completed application forms and related information generally used by the manufacturer or distributor to conduct its review of such a proposal, and a copy of all agreements regarding the proposed transfer, assignment, or sale.

(b) The manufacturer or distributor shall send a letter by certified mail to the dealer within sixty (60) days of receipt of the information specified in subsection (a). The letter must indicate any disapproval of the transfer, assignment, or sale and must set forth the material reasons for the disapproval. If the manufacturer or distributor does not respond by letter within the sixty (60) day period, the manufacturer's or distributor's consent to the proposed transfer, assignment, or sale is considered to have been granted. A manufacturer or distributor may not unreasonably withhold approval of a transfer, assignment, or sale.

(c) A manufacturer or distributor has a right of first refusal as specified in the franchise agreement to acquire the new vehicle dealer's assets or ownership if there is a proposed change of more than fifty percent (50%) of the dealer's ownership or the transfer of more than fifty percent (50%) of the new vehicle dealer's assets if all of the following are met:

(1) The manufacturer or distributor notifies the dealer in writing of its intent to exercise its right of first refusal within the sixty (60) day notice limit provided in subsection (b).

(2) The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving consideration, terms, and conditions that are either the same as or better than those they have contracted to receive under the proposed change of more than fifty percent (50%) of the dealer's ownership or the

transfer of more than fifty percent (50%) of the new vehicle dealer's assets.

(3) The proposed change of the dealership's ownership or the transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one (1) or more of the dealer's owners to any of the following:

(A) A designated family member or members including any of the following members of one (1) or more dealer owners:

(i) The spouse.

(ii) A child.

(iii) A grandchild.

(iv) The spouse of a child or a grandchild.

(v) A sibling.

(vi) A parent.

(B) A manager:

(i) employed by the dealer in the dealership during the previous four (4) years; and

(ii) who is otherwise qualified as a dealer operator.

(C) A partnership or corporation controlled by any of the family members described in clause (A).

(D) A trust arrangement established or to be established:

(i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or

(ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners.

(4) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney's fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of the dealer ownership or the transfer of the new vehicle dealer's assets. Payment of expenses and attorney's fees is not required if the dealer has failed to submit an accounting of those expenses within twenty (20) days of the

dealer's receipt of the manufacturer's or distributor's written request for such an accounting. An expense accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

(d) Violation of this section by the manufacturer or distributor is an unfair practice by a manufacturer or distributor.".

Page 1, delete lines 4 through 17.

Delete page 2.

Page 3, delete lines 1 through 35.

Page 3, line 39, delete "to require, coerce, or attempt to".

Page 3, line 40, delete "coerce any new motor vehicle dealer in Indiana".

Page 3, line 40, delete "either" and insert "**any**".

Page 3, delete line 42, begin a new line block indented and insert:

"**(1) Require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to:**

(A) change location of the dealership;

(B) make any substantial alterations to the use of franchises; or

(C) make any substantial alterations to the dealership premises or facilities;

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements.

(2) Require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to divest its ownership of or management in another line make of motor vehicles that the dealer has established in its dealership facilities with the prior written approval of the manufacturer or distributor.".

Page 4, delete lines 1 through 21.

Page 4, line 22, delete "(2)" and insert "**(3)**".

(Reference is to SB 326 as printed February 24, 1999.)

MEEKS R

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred Senate Bill 326, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 22, after "person" insert "**or persons**".

Page 4, line 22, delete "has" and insert "**have**".

Page 4, line 24, delete "and" and insert "**or**".

and when so amended that said bill do pass.

(Reference is to SB 326 as reprinted March 2, 1999.)

BOTTORFF, Chair

Committee Vote: yeas 11, nays 0.