

## SENATE BILL No. 327

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 23-2-2.7-2.

**Synopsis:** Motor vehicle franchisee protections. Prohibits a franchisor from acquiring any part of a business that is engaged in a wholly or partially substantially identical business as a franchisee that holds exclusive rights to that territory. Eliminates the requirement that competition be "unfair" before it is unlawful when a franchisor owned business begins competing with a franchisee. Provides that if no designated franchise territory is assigned, the area of competition is the market area. (Current law states that the area of competition is the area.)

**Effective:** July 1, 1999.

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January 8, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.

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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.

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## SENATE BILL No. 327



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:*

1 SECTION 1. IC 23-2-2.7-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. It is unlawful for any  
3 franchisor who has entered into any franchise agreement with a  
4 franchisee who is either a resident of Indiana or a nonresident operating  
5 a franchise in Indiana to engage in any of the following acts and  
6 practices in relation to the agreement:

7 (1) Coercing the franchisee to:

8 (i) (A) order or accept delivery of any goods, supplies,  
9 inventories, or services which are neither necessary to the  
10 operation of the franchise, required by the franchise  
11 agreement, required by law, nor voluntarily ordered by the  
12 franchisee;

13 (ii) (B) order or accept delivery of any goods offered for sale  
14 by the franchisee which includes modifications or accessories  
15 which are not included in the base price of those goods as  
16 publicly advertised by the franchisor;

17 (iii) (C) participate in an advertising campaign or contest, any



- 1 promotional campaign, promotional materials, display  
 2 decorations, or materials at an expense to the franchisee over  
 3 and above the maximum percentage of gross monthly sales or  
 4 the maximum absolute sum required to be spent by the  
 5 franchisee provided for in the franchise agreement; in the  
 6 absence of such provision for required advertising  
 7 expenditures in the franchise agreement, no such participation  
 8 may be required; or  
 9 ~~(iv)~~ **(D)** enter into any agreement with the franchisor or any  
 10 designee of the franchisor, or do any other act prejudicial to  
 11 the franchisee, by threatening to cancel or fail to renew any  
 12 agreement between the franchisee and the franchisor. Notice  
 13 in good faith to any franchisee of the franchisee's violation of  
 14 the terms or provisions of a franchise or agreement does not  
 15 constitute a violation of this subdivision.
- 16 (2) Refusing or failing to deliver in reasonable quantities and  
 17 within a reasonable time after receipt of an order from a  
 18 franchisee for any goods, supplies, inventories, or services which  
 19 the franchisor has agreed to supply to the franchisee, unless the  
 20 failure is caused by acts or causes beyond the control of the  
 21 franchisor.
- 22 (3) Denying the surviving spouse, heirs, or estate of a deceased  
 23 franchisee the opportunity to participate in the ownership of the  
 24 franchise under a valid franchise agreement for a reasonable time  
 25 after the death of the franchisee, provided that the surviving  
 26 spouse, heirs, or estate maintains all standards and obligations of  
 27 the franchise.
- 28 (4) Establishing **or acquiring wholly or partially** a  
 29 franchisor-owned outlet engaged in a **wholly or partially**  
 30 substantially identical business to that of the franchisee within the  
 31 exclusive territory granted the franchisee by the franchise  
 32 agreement or, if no exclusive territory is designated, competing  
 33 **unfairly** with the franchisee within a reasonable **market** area.  
 34 However, a franchisor shall not be considered to be competing  
 35 when operating a business either temporarily for a reasonable  
 36 period of time, or in a bona fide retail operation which is for sale  
 37 to any qualified independent person at a fair and reasonable price,  
 38 or in a bona fide relationship in which an independent person has  
 39 made a significant investment subject to loss in the business  
 40 operation and can reasonably expect to acquire full ownership of  
 41 such business on reasonable terms and conditions.
- 42 (5) Discriminating unfairly among its franchisees or unreasonably

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1 failing or refusing to comply with any terms of a franchise  
2 agreement.  
3 (6) Obtaining money, goods, services, or any other benefit from  
4 any other person with whom the franchisee does business, on  
5 account of, or in relation to, the transaction between the  
6 franchisee and the other person, other than compensation for  
7 services rendered by the franchisor, unless the benefit is promptly  
8 accounted for, and transmitted to the franchisee.  
9 (7) Increasing prices of goods provided by the franchisor which  
10 the franchisee had ordered for retail consumers prior to the  
11 franchisee's receipt of a written official price increase notification.  
12 Price increases caused by conformity to a state or federal law, the  
13 revaluation of the United States dollar in the case of foreign-made  
14 goods or pursuant to the franchise agreement are not subject to  
15 this subdivision.  
16 (8) Using deceptive advertising or engaging in deceptive acts in  
17 connection with the franchise or the franchisor's business.

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