February 24, 1999

SENATE BILL No. 326

DIGEST OF SB 326 (Updated February 23, 1999 2:00 pm - DI 75)

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 franchisor approval of the transferee. Requires the franchisor to objectively review the transferee. Creates other requirements for franchisors, franchisees, and transferees. Prohibits manufacturers, distributors, and agents from certain unfair practices regarding new motor vehicle dealers or franchisees.

Effective: July 1, 1999.

Meeks R

January 11, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
February 23, 1999, amended, reported favorably — Do Pass.

February 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.

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) If there is a sale or transfer of:**

(1) the business and assets of;

(2) a complete ownership interest in; or

(3) a controlling interest in the capital stock of;

a new motor vehicle dealer and the proposed transferee has indicated a willingness to comply with all requirements of the franchise then in effect, the franchisee shall notify the franchisor of the intention by written notice setting forth the prospective transferee's name and address and the names and addresses of the transferee's prospective management personnel.

(b) The franchisee and prospective transferee shall supply the franchisor with other information regarding the transferee's character, business experience, and financial ability as reasonably requested by the franchisor within thirty (30) days of written notice advising of the proposed transfer to enable the franchisor to

evaluate the transferee's qualifications and ability to comply with the requirements of the franchise then in effect.

(c) The franchisor shall evaluate the prospective transferee and the transferee's prospective management personnel on the basis of reasonable and objective criteria applied fairly and objectively.

(d) The franchisor shall provide the franchisee and the prospective transferee with written notice by certified mail of a refusal to approve a sale or transfer of the business and assets or all the business and assets or a controlling interest in the capital stock of a new motor vehicle dealer within thirty (30) days of receipt of all the information requested under subsection (b). The notice must specify the reasonable criteria used to evaluate the prospective transferee and the criteria that the prospective transferee failed to meet.

(e) A franchisor may not impose a condition upon approval of a proposed transfer other than the transferee's compliance with the requirements of the franchise agreement between the franchisor and the transferor.

(f) An owner of a new motor vehicle franchise may appoint, by will or other written instrument, a designated family member to succeed in the ownership interest of the new motor vehicle franchise.

(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.

(h) Violation of this section by a franchisor is an unfair practice by the franchisor.

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.

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

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(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.