

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 SPONSORS — 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.

HOUSE ACTION

March 8, 1999, read first time and referred to Committee on Commerce and Economic Development.

March 23, 1999, amended, reported — Do Pass.

SB 326—LS 7335/DI 94+



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.

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:

1 SECTION 1. IC 9-23-3-22 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
3 **1, 1999]: Sec. 22. (a) A dealer may not transfer, sell, or assign the**
4 **business and assets of a dealership or an interest in the dealership**
5 **to another person that contemplates or is conditioned upon a**
6 **continuation of the franchise relationship with the manufacturer**
7 **or distributor unless the dealer first:**
8 (1) **notifies the manufacturer or distributor of the dealer's**
9 **decision to make the transfer, assignment, or sale by written**
10 **notice; and**
11 (2) **obtains the approval of the manufacturer or distributor.**
12 **The dealer must provide the manufacturer or distributor with**
13 **completed application forms and related information generally**
14 **used by the manufacturer or distributor to conduct its review of**
15 **such a proposal, and a copy of all agreements regarding the**
16 **proposed transfer, assignment, or sale.**
17 (b) **The manufacturer or distributor shall send a letter by**
18 **certified mail to the dealer within sixty (60) days of receipt of the**

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

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

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

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

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

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

33 (i) The spouse.

34 (ii) A child.

35 (iii) A grandchild.

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

37 (v) A sibling.

38 (vi) A parent.

39 (B) A manager:

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

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



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

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

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

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

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

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

29 **SECTION 2. IC 9-23-3-23 IS ADDED TO THE INDIANA CODE**
 30 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 31 **1, 1999]: Sec. 23. It is an unfair practice for a manufacturer,**
 32 **distributor, officer, or agent to do any of the following:**

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

35 **(A) change location of the dealership;**

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

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

40 **if to do so would be unreasonable or would not be justified by**
 41 **current economic conditions or reasonable business**
 42 **considerations. This subdivision does not prevent a**



- 1 **manufacturer or distributor from establishing and enforcing**
2 **reasonable facility requirements.**
- 3 **(2) Require, coerce, or attempt to coerce any new motor**
4 **vehicle dealer in Indiana to divest its ownership of or**
5 **management in another line make of motor vehicles that the**
6 **dealer has established in its dealership facilities with the prior**
7 **written approval of the manufacturer or distributor.**
- 8 **(3) Establish or acquire wholly or partially a franchisor**
9 **owned outlet engaged in a substantially identical business to**
10 **that of the franchisee within the exclusive territory granted**
11 **the franchisee by the franchise agreement or, if no exclusive**
12 **territory is designated, competing unfairly with the franchisee**
13 **within a reasonable market area. A franchisor is not**
14 **considered to be competing unfairly if operating:**
- 15 **(A) a business either temporarily for a reasonable period**
16 **of time;**
- 17 **(B) in a bona fide retail operation that is for sale to any**
18 **qualified independent person at a fair and reasonable**
19 **price; or**
- 20 **(C) in a bona fide relationship in which an independent**
21 **person has made a significant investment subject to loss in**
22 **the business operation and can reasonably expect to**
23 **acquire majority ownership and managerial control of the**
24 **business on reasonable terms and conditions.**

