



March 27, 2013

ENGROSSED HOUSE BILL No. 1386

DIGEST OF HB 1386 (Updated March 25, 2013 12:26 pm - DI 106)

Citations Affected: IC 9-23.

Synopsis: Unfair practices concerning motor vehicles sales. Amends existing provisions and establishes new provisions concerning unfair practices with respect to motor vehicle dealers, manufacturers, distributors, franchises, and franchisees.

Effective: July 1, 2013.

Speedy

(SENATE SPONSOR — MERRITT)

January 22, 2013, read first time and referred to Committee on Roads and Transportation.
February 18, 2013, amended, reported — Do Pass.
February 20, 2013, read second time, ordered engrossed. Engrossed.
February 25, 2013, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 27, 2013, read first time and referred to Committee on Civil Law.
March 26, 2013, reported favorably — Do Pass.

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EH 1386—LS 7489/DI 103+



March 27, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1386

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 9-23-3-16 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 16. (a) It is an unfair
3 practice for a manufacturer or distributor to sell a motor vehicle for
4 resale to a person not licensed under this article.

5 (b) **This subsection applies if a dealer sells or leases a motor**
6 **vehicle to a customer that resells the motor vehicle or exports the**
7 **motor vehicle to a foreign country. A manufacturer or distributor**
8 **may not take or threaten to take adverse action or otherwise**
9 **discriminate against the dealer unless the dealer knew or**
10 **reasonably should have known before the dealer sold or leased the**
11 **motor vehicle to the customer that the customer intended to resell**
12 **or export the motor vehicle. Titling and registering a motor vehicle**
13 **in any state in the name of the customer to whom the dealer sold or**
14 **leased the motor vehicle establishes a rebuttable presumption that**
15 **the dealer did not know or should not reasonably have known that**
16 **the customer intended to resell or export the motor vehicle.**

17 (c) For purposes of subsection (b), adverse actions by a

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1 manufacturer or distributor include the following conduct by a
2 manufacturer or distributor, whether actual or threatened:

- 3 (1) Failing or refusing to allocate, sell, or deliver a motor
4 vehicle to the dealer.
- 5 (2) Discriminating against the dealer in the allocation of
6 motor vehicles.
- 7 (3) Charging back or withholding payments or other
8 consideration for which a dealer is eligible under a warranty
9 reimbursement, sales promotion, incentive program, or
10 contest.
- 11 (4) Disqualifying a dealer from participating in a sales
12 promotion, incentive program, or contest.
- 13 (5) Terminating a franchise.

14 SECTION 2. IC 9-23-3-21 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 21. (a) It is an unfair
16 practice for a manufacturer or distributor to terminate a franchise in
17 violation of ~~IC 23-2-2.7-3~~: do the following:

- 18 (1) Cancel or terminate a franchise or selling agreement of a
19 franchisee, or fail or refuse to extend or renew a franchise or
20 selling agreement upon the franchise's or selling agreement's
21 expiration, without good cause or notice to the franchisee by
22 certified mail, return receipt requested:
 - 23 (A) at least ninety (90) days before the cancellation or
24 termination; or
 - 25 (B) at least ten (10) days before the cancellation or
26 termination if any of the following apply:
 - 27 (i) The franchisee has abandoned business operations or
28 otherwise failed to conduct sales and service operations
29 during regular business hours for at least seven (7)
30 consecutive business days, unless the abandonment or
31 closure is due to an act of God or another act over which
32 the franchisee has no control.
 - 33 (ii) The franchisee or another operator of the franchise
34 has been convicted of or pled guilty to an offense
35 punishable by at least one (1) year of imprisonment.
 - 36 (iii) The dealer files for bankruptcy or enters into
37 receivership.
 - 38 (iv) The license of the dealer is revoked under IC 9-23-2
39 or IC 9-23-6.
 - 40 (v) The dealer commits fraud.
- 41 (2) Offer a renewal, replacement, or succeeding franchise or
42 selling agreement that substantially changes or modifies the

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1 sales and service obligations, facilities standards, capital
2 requirements, or other terms of the original franchise or
3 agreement of a franchisee without notice to the franchisee by
4 certified mail, return receipt requested, at least ninety (90)
5 days before the expiration or termination of the original
6 franchise or agreement.

7 Notice provided under this subsection must include a detailed
8 statement setting forth the specific grounds for the proposed
9 action.

10 (b) For purposes of subsection (a)(1), the following do not
11 constitute good cause, provided that no unfair practice is
12 committed under IC 9-23-3-11 and no transfer, sale, or assignment
13 is made in violation of IC 9-23-3-22:

14 (1) A change of ownership or executive management of a
15 dealership.

16 (2) Requiring the appointment of an individual to an executive
17 management position in a dealership.

18 (3) Ownership of, investment in, participation in the
19 management of, or holding a license for the sale of any line
20 make of new motor vehicles by a franchisee or an owner of an
21 interest in a franchise.

22 (c) Good cause exists under subsection (a)(1) with respect to all
23 franchisees of a line make if the manufacturer of the line make
24 permanently discontinues the manufacture or assembly of the line
25 make.

26 (d) Not more than thirty (30) days after a franchisee receives
27 notice under subsection (a), the franchisee may protest the
28 proposed action.

29 SECTION 3. IC 9-23-3-21.3 IS ADDED TO THE INDIANA CODE
30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
31 1, 2013]: Sec. 21.3. (a) This section applies when a dealer requests
32 payment from a manufacturer or distributor following:

33 (1) the termination, cancellation, or nonrenewal by the
34 manufacturer or distributor of a franchise between the dealer
35 and the manufacturer or distributor; or

36 (2) the discontinuance of a line make by the manufacturer or
37 distributor.

38 (b) Not more than ninety (90) days after a manufacturer or
39 distributor receives a request for payment from a dealer described
40 in subsection (a), the manufacturer or distributor shall pay to the
41 dealer the following amounts for items that are in the dealer's
42 inventory or possession at the time of termination, cancellation,

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1 nonrenewal, or discontinuance, that the dealer delivers to the
 2 manufacturer or distributor, and as to which the dealer conveys
 3 clear title to the manufacturer or distributor under subsection (c):

4 (1) For:

5 (A) current model year motor vehicles; or

6 (B) immediately preceding model year motor vehicles with
 7 less than three hundred (300) miles;

8 acquired from the manufacturer or distributor in the usual
 9 course of business, the cost at acquisition less any discounts or
 10 allowances received from the manufacturer or distributor.

11 (2) For all new, unused, and undamaged parts in original
 12 packaging that were purchased from the manufacturer or
 13 distributor:

14 (A) the cost listed in the manufacturer's or distributor's
 15 parts catalog in effect at the time of termination,
 16 cancellation, nonrenewal, or discontinuance; minus

17 (B) any allowances authorized by the manufacturer or
 18 distributor.

19 (3) For required special tools, equipment, or computer
 20 equipment that was used for reporting financial data to the
 21 manufacturer or distributor, used solely for the franchise
 22 being terminated, and purchased by the dealer during the two
 23 (2) years immediately preceding the termination, cancellation,
 24 nonrenewal, or discontinuance, fair market value.

25 (4) For signs that bear a trademark or trade name, that the
 26 dealer was required by the manufacturer or distributor to
 27 purchase, and that the dealer purchased within three (3) years
 28 of the termination, cancellation, nonrenewal, or
 29 discontinuance, fair market value.

30 For purposes of this subsection, fair market value is determined on
 31 the date of termination, cancellation, nonrenewal, or
 32 discontinuance.

33 (c) Title to items described in subsection (b) transfers from a
 34 dealer to a manufacturer or distributor on the date of termination,
 35 cancellation, nonrenewal, or discontinuance. The dealer has an
 36 enforceable security interest in the transferred items.

37 (d) It is an unfair practice for a manufacturer or distributor to
 38 violate this section.

39 SECTION 4. IC 9-23-3-21.6 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2013]: Sec. 21.6. (a) This section applies when a manufacturer or
 42 distributor terminates, cancels, or fails to renew a franchise

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1 between the manufacturer or distributor and a dealer, unless the
 2 termination, cancellation, or failure to renew is due to any of the
 3 following:

4 (1) The dealer files for bankruptcy or enters into receivership.

5 (2) The dealer's license is revoked under IC 9-23-2 or
 6 IC 9-23-6.

7 (3) The dealer has been convicted of or pled guilty to a felony.

8 (4) The dealer commits fraud.

9 (5) The dealer has abandoned business operations or
 10 otherwise failed to conduct sales and service operations
 11 during regular business hours for at least seven (7)
 12 consecutive days, unless the abandonment or closure is due to
 13 an act of God or another act over which the franchise has no
 14 control.

15 (b) Except as provided in subsection (c), upon termination,
 16 cancellation, or nonrenewal, a manufacturer or distributor shall
 17 pay to a dealer the following amounts:

18 (1) If the dealer is leasing the dealership facilities from a
 19 person other than the manufacturer or distributor, the lesser
 20 of:

21 (A) the total lease payments remaining unpaid on the date
 22 of termination, cancellation, or nonrenewal; or

23 (B) the total annual lease payments for one (1) year;
 24 subject to damages mitigated by the dealer under the terms of
 25 the lease.

26 (2) If the dealer owns the dealership facilities, an amount
 27 equal to the reasonable rental value of the facilities for the one
 28 (1) year period beginning on the date of termination,
 29 cancellation, or nonrenewal, subject to damages mitigated by
 30 the dealer.

31 (c) A manufacturer or distributor may discharge the
 32 manufacturer's or distributor's obligations under a lease with a
 33 dealer by negotiating with the dealer a lease termination payment,
 34 a sublease, or a new lease.

35 (d) The manufacturer or distributor is entitled to possession of
 36 the dealership facilities during the time period for which the
 37 manufacturer or distributor makes any lease payments.

38 (e) It is an unfair practice for a manufacturer or a distributor
 39 to violate this section.

40 SECTION 5. IC 9-23-3-23, AS AMENDED BY P.L.49-2007,
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2013]: Sec. 23. (a) It is an unfair practice for a manufacturer,

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- 1 distributor, officer, or agent to do any of the following:
- 2 (1) Require, coerce, or attempt to coerce any new motor vehicle
- 3 dealer in Indiana to:
- 4 (A) change location of the dealership;
- 5 (B) make any substantial alterations to the use of franchises;
- 6 or
- 7 (C) make any substantial alterations to the dealership premises
- 8 or facilities;
- 9 if to do so would be unreasonable or would not be justified by
- 10 current economic conditions or reasonable business
- 11 considerations. This subdivision does not prevent a manufacturer
- 12 or distributor from establishing and enforcing reasonable facility
- 13 requirements, **provided, however, that a motor vehicle dealer**
- 14 **may elect to use for the facility alteration locally-sourced**
- 15 **materials or supplies that are substantially similar to those**
- 16 **required by the manufacturer or distributor, subject to the**
- 17 **approval of the manufacturer or distributor.**
- 18 (2) Require, coerce, or attempt to coerce any new motor vehicle
- 19 dealer in Indiana to divest its ownership of or management in
- 20 another line or make of motor vehicles that the dealer has
- 21 established in its dealership facilities with the prior written
- 22 approval of the manufacturer or distributor.
- 23 (3) Establish or acquire wholly or partially a franchisor owned
- 24 outlet engaged wholly or partially in a substantially identical
- 25 business to that of the franchisee within the exclusive territory
- 26 granted the franchisee by the franchise agreement or, if no
- 27 exclusive territory is designated, competing unfairly with the
- 28 franchisee within a reasonable market area. A franchisor is not
- 29 considered to be competing unfairly if operating:
- 30 (A) a business for less than two (2) years;
- 31 (B) in a bona fide retail operation that is for sale to any
- 32 qualified independent person at a fair and reasonable price; or
- 33 (C) in a bona fide relationship in which an independent person
- 34 or persons have made a significant investment subject to loss
- 35 in the business operation and can reasonably expect to acquire
- 36 majority ownership or managerial control of the business on
- 37 reasonable terms and conditions.
- 38 (4) **Require a dealer, as a condition of granting or continuing**
- 39 **a franchise, approving the transfer of ownership or assets of**
- 40 **a new motor vehicle dealer, or approving a successor to a new**
- 41 **motor vehicle dealer to:**
- 42 (A) **construct a new dealership facility;**

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- 1 **(B) modify or change the location of an existing dealership;**
- 2 **or**
- 3 **(C) grant the manufacturer or distributor control rights**
- 4 **over any real property owned, leased, controlled, or**
- 5 **occupied by the dealer.**
- 6 **(5) Prohibit a dealer from representing more than one (1) line**
- 7 **make of motor vehicles from the same or a modified facility**
- 8 **if:**
 - 9 **(A) reasonable facilities exist for the combined operations;**
 - 10 **(B) the dealer meets reasonable capitalization**
 - 11 **requirements for the original line make and complies with**
 - 12 **the reasonable facilities requirements of the manufacturer**
 - 13 **or distributor; and**
 - 14 **(C) the prohibition is not justified by the reasonable**
 - 15 **business considerations of the manufacturer or distributor.**

16 This subdivision shall Subdivisions (3) through (5) do not apply to
 17 recreational vehicle manufacturer franchisors.

18 **(b) Nothing in this section prohibits the enforcement of a**
 19 **voluntary agreement between the manufacturer or distributor and**
 20 **the franchisee where separate and valuable consideration has been**
 21 **offered and accepted.**

22 SECTION 6. IC 9-23-3-23.5 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2013]: **Sec. 23.5. (a) A manufacturer or distributor may not**
 25 **coerce or require a dealer to:**

- 26 **(1) make an improvement to the dealer's facilities; or**
- 27 **(2) install signs or other franchisor image elements;**
- 28 **that would result in replacing or substantially altering**
- 29 **improvements or image elements that the dealer made or installed**
- 30 **during the immediately preceding seven (7) years as required by**
- 31 **the manufacturer or distributor, unless the improvement or**
- 32 **installation of signs or visual elements is necessary to comply with**
- 33 **the health or safety laws of the state or to sell, service, or display a**
- 34 **new motor vehicle due to the unique technology of the new motor**
- 35 **vehicle.**

36 **(b) It is an unfair practice for a manufacturer or distributor to**
 37 **violate this section.**

38 **(c) This section does not apply to a recreational vehicle**
 39 **manufacturer franchisor.**

40 SECTION 7. IC 9-23-4-4 IS AMENDED TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2013]: **Sec. 4. (a) This section does not apply**
 42 **to damage to glass, radios, tires, air bags, navigation systems, DVD**

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1 **players, voice command devices, hands free technology,** and
2 bumpers when replaced by identical manufacturer's original equipment.

3 (b) Any uncorrected damage or any corrected damage exceeding
4 four percent (4%) of the manufacturer's suggested retail price (as
5 defined in 26 U.S.C. 4216), as measured by retail repair costs, must be
6 disclosed **by the dealer** in writing before delivery to ~~an~~ **the** ultimate
7 purchaser.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1386, 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 1, delete lines 1 through 17.

Delete pages 2 through 6.

Page 7, delete lines 1 through 41.

Page 8, line 14, after "know" insert "**or should not reasonably have known**".

Page 8, line 42, delete "either" and insert "**any**".

Page 9, line 9, delete "three (3) years" and insert "**one (1) year**".

Page 9, between lines 9 and 10, begin a new line triple block indented and insert:

"(iii) The dealer files for bankruptcy or enters into receivership.

(iv) The license of the dealer is revoked under IC 9-23-2 or IC 9-23-6.

(v) The dealer commits fraud."

Page 9, line 22, delete "cause:" and insert "**cause, provided that no unfair practice is committed under IC 9-23-3-11 and no transfer, sale, or assignment is made in violation of IC 9-23-3-22:**".

Page 9, line 34, delete "However, a franchisee is entitled to sell all products in the".

Page 9, delete lines 35 through 36.

Page 9, line 39, delete "under IC 9-23-1.1-9." and insert ".".

Page 9, delete lines 40 through 42.

Delete pages 10 through 13.

Page 14, delete lines 1 through 15, begin a new paragraph and insert:

"SECTION 3. IC 9-23-3-21.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 21.3. (a) This section applies when a dealer requests payment from a manufacturer or distributor following:

(1) the termination, cancellation, or nonrenewal by the manufacturer or distributor of a franchise between the dealer and the manufacturer or distributor; or

(2) the discontinuance of a line make by the manufacturer or distributor.

(b) Not more than ninety (90) days after a manufacturer or

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distributor receives a request for payment from a dealer described in subsection (a), the manufacturer or distributor shall pay to the dealer the following amounts for items that are in the dealer's inventory or possession at the time of termination, cancellation, nonrenewal, or discontinuance, that the dealer delivers to the manufacturer or distributor, and as to which the dealer conveys clear title to the manufacturer or distributor under subsection (c):

(1) For:

(A) current model year motor vehicles; or

(B) immediately preceding model year motor vehicles with less than three hundred (300) miles;

acquired from the manufacturer or distributor in the usual course of business, the cost at acquisition less any discounts or allowances received from the manufacturer or distributor.

(2) For all new, unused, and undamaged parts in original packaging that were purchased from the manufacturer or distributor:

(A) the cost listed in the manufacturer's or distributor's parts catalog in effect at the time of termination, cancellation, nonrenewal, or discontinuance; minus

(B) any allowances authorized by the manufacturer or distributor.

(3) For required special tools, equipment, or computer equipment that was used for reporting financial data to the manufacturer or distributor, used solely for the franchise being terminated, and purchased by the dealer during the two (2) years immediately preceding the termination, cancellation, nonrenewal, or discontinuance, fair market value.

(4) For signs that bear a trademark or trade name, that the dealer was required by the manufacturer or distributor to purchase, and that the dealer purchased within three (3) years of the termination, cancellation, nonrenewal, or discontinuance, fair market value.

For purposes of this subsection, fair market value is determined on the date of termination, cancellation, nonrenewal, or discontinuance.

(c) Title to items described in subsection (b) transfers from a dealer to a manufacturer or distributor on the date of termination, cancellation, nonrenewal, or discontinuance. The dealer has an enforceable security interest in the transferred items.

(d) It is an unfair practice for a manufacturer or distributor to violate this section.



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SECTION 4. IC 9-23-3-21.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 21.6. (a) This section applies when a manufacturer or distributor terminates, cancels, or fails to renew a franchise between the manufacturer or distributor and a dealer, unless the termination, cancellation, or failure to renew is due to any of the following:**

- (1) The dealer files for bankruptcy or enters into receivership.
- (2) The dealer's license is revoked under IC 9-23-2 or IC 9-23-6.
- (3) The dealer has been convicted of or pled guilty to a felony.
- (4) The dealer commits fraud.
- (5) The dealer has abandoned business operations or otherwise failed to conduct sales and service operations during regular business hours for at least seven (7) consecutive days, unless the abandonment or closure is due to an act of God or another act over which the franchise has no control.

(b) Except as provided in subsection (c), upon termination, cancellation, or nonrenewal, a manufacturer or distributor shall pay to a dealer the following amounts:

(1) If the dealer is leasing the dealership facilities from a person other than the manufacturer or distributor, the lesser of:

- (A) the total lease payments remaining unpaid on the date of termination, cancellation, or nonrenewal; or**
- (B) the total annual lease payments for one (1) year; subject to damages mitigated by the dealer under the terms of the lease.**

(2) If the dealer owns the dealership facilities, an amount equal to the reasonable rental value of the facilities for the one (1) year period beginning on the date of termination, cancellation, or nonrenewal, subject to damages mitigated by the dealer.

(c) A manufacturer or distributor may discharge the manufacturer's or distributor's obligations under a lease with a dealer by negotiating with the dealer a lease termination payment, a sublease, or a new lease.

(d) The manufacturer or distributor is entitled to possession of the dealership facilities during the time period for which the manufacturer or distributor makes any lease payments.

(e) It is an unfair practice for a manufacturer or a distributor



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to violate this section."

Page 14, line 18, after "23." insert "(a)".

Page 14, line 31, delete "including using material or supplies that are" and insert **"provided, however, that a motor vehicle dealer may elect to use for the facility alteration locally-sourced materials or supplies that are substantially similar to those required by the manufacturer or distributor, subject to the approval of the manufacturer or distributor."**

Page 14, delete lines 32 through 33.

Page 15, line 24, after "if" insert "

(A)".

Page 15, line 24, delete "operations." and insert **"operations; (B) the dealer meets reasonable capitalization requirements for the original line make and complies with the reasonable facilities requirements of the manufacturer or distributor; and (C) the prohibition is not justified by the reasonable business considerations of the manufacturer or distributor."**

Page 15, delete lines 25 through 27.

Page 15, line 28, delete "(6)" and insert "(5)".

Page 15, between lines 29 and 30, begin a new paragraph and insert: **"(b) Nothing in this section prohibits the enforcement of a voluntary agreement between the manufacturer or distributor and the franchisee where separate and valuable consideration has been offered and accepted."**

Page 15, delete lines 30 through 42.

Page 16, delete lines 1 through 18.

Page 16, line 23, delete "improve" and insert **"make an improvement to"**.

Page 16, line 27, delete "ten (10)" and insert **"seven (7)"**.

Page 16, line 28, delete "distributor." and insert **"distributor, unless the improvement or installation of signs or visual elements is necessary to comply with the health or safety laws of the state or to sell, service, or display a new motor vehicle due to the unique technology of the new motor vehicle."**

Page 16, delete lines 33 through 42.

Delete pages 17 through 18.

Page 19, delete lines 1 through 13.

Page 19, line 23, after "disclosed" insert **"by the dealer"**.

Page 19, line 23, strike "an" and insert **"the"**.

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Page 19, delete lines 24 through 42.

Delete page 20.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1386 as introduced.)

SOLIDAY, Chair

Committee Vote: yeas 10, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred House Bill No. 1386, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1386 as printed February 18, 2013.)

ZAKAS, Chairperson

Committee Vote: Yeas 7, Nays 0.

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