

Adopted	Rejected
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## COMMITTEE REPORT

YES:	10
NO:	0

### 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:*

- 1 Page 1, delete lines 1 through 17.
- 2 Delete pages 2 through 6.
- 3 Page 7, delete lines 1 through 41.
- 4 Page 8, line 14, after "know" insert "**or should not reasonably have**
- 5 **known**".
- 6 Page 8, line 42, delete "either" and insert "**any**".
- 7 Page 9, line 9, delete "three (3) years" and insert "**one (1) year**".
- 8 Page 9, between lines 9 and 10, begin a new line triple block
- 9 indented and insert:
- 10 "**(iii) The dealer files for bankruptcy or enters into**
- 11 **receivership.**
- 12 **(iv) The license of the dealer is revoked under IC 9-23-2 or**
- 13 **IC 9-23-6.**
- 14 **(v) The dealer commits fraud.**".
- 15 Page 9, line 22, delete "cause:" and insert "**cause, provided that no**
- 16 **unfair practice is committed under IC 9-23-3-11 and no transfer,**

- 1 **sale, or assignment is made in violation of IC 9-23-3-22:".**  
 2 Page 9, line 34, delete "However, a franchisee is entitled to sell all  
 3 products in the".  
 4 Page 9, delete lines 35 through 36.  
 5 Page 9, line 39, delete "under IC 9-23-1.1-9." and insert ".".  
 6 Page 9, delete lines 40 through 42.  
 7 Delete pages 10 through 13.  
 8 Page 14, delete lines 1 through 15, begin a new paragraph and  
 9 insert:  
 10 "SECTION 3. IC 9-23-3-21.3 IS ADDED TO THE INDIANA  
 11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 12 [EFFECTIVE JULY 1, 2013]: **Sec. 21.3. (a) This section applies**  
 13 **when a dealer requests payment from a manufacturer or**  
 14 **distributor following:**  
 15 (1) the termination, cancellation, or nonrenewal by the  
 16 manufacturer or distributor of a franchise between the dealer  
 17 and the manufacturer or distributor; or  
 18 (2) the discontinuance of a line make by the manufacturer or  
 19 distributor.  
 20 (b) Not more than ninety (90) days after a manufacturer or  
 21 distributor receives a request for payment from a dealer described  
 22 in subsection (a), the manufacturer or distributor shall pay to the  
 23 dealer the following amounts for items that are in the dealer's  
 24 inventory or possession at the time of termination, cancellation,  
 25 nonrenewal, or discontinuance, that the dealer delivers to the  
 26 manufacturer or distributor, and as to which the dealer conveys  
 27 clear title to the manufacturer or distributor under subsection (c):  
 28 (1) For:  
 29 (A) current model year motor vehicles; or  
 30 (B) immediately preceding model year motor vehicles with  
 31 less than three hundred (300) miles;  
 32 acquired from the manufacturer or distributor in the usual  
 33 course of business, the cost at acquisition less any discounts or  
 34 allowances received from the manufacturer or distributor.  
 35 (2) For all new, unused, and undamaged parts in original  
 36 packaging that were purchased from the manufacturer or  
 37 distributor:  
 38 (A) the cost listed in the manufacturer's or distributor's

- 1 parts catalog in effect at the time of termination,  
 2 cancellation, nonrenewal, or discontinuance; minus  
 3 (B) any allowances authorized by the manufacturer or  
 4 distributor.
- 5 (3) For required special tools, equipment, or computer  
 6 equipment that was used for reporting financial data to the  
 7 manufacturer or distributor, used solely for the franchise  
 8 being terminated, and purchased by the dealer during the two  
 9 (2) years immediately preceding the termination, cancellation,  
 10 nonrenewal, or discontinuance, fair market value.
- 11 (4) For signs that bear a trademark or trade name, that the  
 12 dealer was required by the manufacturer or distributor to  
 13 purchase, and that the dealer purchased within three (3) years  
 14 of the termination, cancellation, nonrenewal, or  
 15 discontinuance, fair market value.
- 16 For purposes of this subsection, fair market value is determined on  
 17 the date of termination, cancellation, nonrenewal, or  
 18 discontinuance.
- 19 (c) Title to items described in subsection (b) transfers from a  
 20 dealer to a manufacturer or distributor on the date of termination,  
 21 cancellation, nonrenewal, or discontinuance. The dealer has an  
 22 enforceable security interest in the transferred items.
- 23 (d) It is an unfair practice for a manufacturer or distributor to  
 24 violate this section.
- 25 SECTION 4. IC 9-23-3-21.6 IS ADDED TO THE INDIANA CODE  
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 27 1, 2013]: Sec. 21.6. (a) This section applies when a manufacturer or  
 28 distributor terminates, cancels, or fails to renew a franchise  
 29 between the manufacturer or distributor and a dealer, unless the  
 30 termination, cancellation, or failure to renew is due to any of the  
 31 following:
- 32 (1) The dealer files for bankruptcy or enters into receivership.  
 33 (2) The dealer's license is revoked under IC 9-23-2 or  
 34 IC 9-23-6.  
 35 (3) The dealer has been convicted of or pled guilty to a felony.  
 36 (4) The dealer commits fraud.  
 37 (5) The dealer has abandoned business operations or  
 38 otherwise failed to conduct sales and service operations

1 during regular business hours for at least seven (7)  
2 consecutive days, unless the abandonment or closure is due to  
3 an act of God or another act over which the franchise has no  
4 control.

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

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

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

13 (B) the total annual lease payments for one (1) year;  
14 subject to damages mitigated by the dealer under the terms of  
15 the lease.

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

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

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

28 (e) It is an unfair practice for a manufacturer or a distributor  
29 to violate this section."

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

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

37 Page 14, delete lines 32 through 33.

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

- 1 (A)".
- 2 Page 15, line 24, delete "operations." and insert "**operations;**
- 3 **(B) the dealer meets reasonable capitalization**
- 4 **requirements for the original line make and complies with**
- 5 **the reasonable facilities requirements of the manufacturer**
- 6 **or distributor; and**
- 7 **(C) the prohibition is not justified by the reasonable**
- 8 **business considerations of the manufacturer or**
- 9 **distributor."**
- 10 Page 15, delete lines 25 through 27.
- 11 Page 15, line 28, delete "(6)" and insert "**(5)**".
- 12 Page 15, between lines 29 and 30, begin a new paragraph and insert:
- 13 "**(b) Nothing in this section prohibits the enforcement of a**
- 14 **voluntary agreement between the manufacturer or distributor and**
- 15 **the franchisee where separate and valuable consideration has been**
- 16 **offered and accepted."**
- 17 Page 15, delete lines 30 through 42.
- 18 Page 16, delete lines 1 through 18.
- 19 Page 16, line 23, delete "improve" and insert "**make an**
- 20 **improvement to"**.
- 21 Page 16, line 27, delete "ten (10)" and insert "**seven (7)**".
- 22 Page 16, line 28, delete "distributor." and insert "**distributor, unless**
- 23 **the improvement or installation of signs or visual elements is**
- 24 **necessary to comply with the health or safety laws of the state or**
- 25 **to sell, service, or display a new motor vehicle due to the unique**
- 26 **technology of the new motor vehicle."**
- 27 Page 16, delete lines 33 through 42.
- 28 Delete pages 17 through 18.
- 29 Page 19, delete lines 1 through 13.
- 30 Page 19, line 23, after "disclosed" insert "**by the dealer"**.
- 31 Page 19, line 23, strike "an" and insert "**the"**.

- 1 Page 19, delete lines 24 through 42.
- 2 Delete page 20.
- 3 Renumber all SECTIONS consecutively.  
(Reference is to HB 1386 as introduced.)

**and when so amended that said bill do pass.**

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Representative Soliday