

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1386 be amended to read as follows:

- 1 Page 1, line 1, delete "IC 9-23-3-16" and insert "IC 9-32-13-18, AS
- 2 ADDED BY SEA 537-2013, SECTION 78,".
- 3 Page 1, line 2, delete "16." and insert "18. (a)".
- 4 Page 2, delete lines 14 through 42, begin a new paragraph and
- 5 insert:
- 6 "SECTION 2. IC 9-32-13-23, AS ADDED BY SEA 537-2013,
- 7 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2013]: (a) It is an unfair practice for a manufacturer,
- 9 distributor, officer, or agent to do any of the following:
- 10 (1) Require, coerce, or attempt to coerce a new motor vehicle
- 11 dealer in Indiana to:
- 12 (A) change the location of the dealership;
- 13 (B) make any substantial alterations to the use of franchises;
- 14 or
- 15 (C) make any substantial alterations to the dealership premises
- 16 or facilities;
- 17 if to do so would be unreasonable or would not be justified by
- 18 current economic conditions or reasonable business
- 19 considerations. This subdivision does not prevent a manufacturer
- 20 or distributor from establishing and enforcing reasonable facility
- 21 requirements. **However, a motor vehicle dealer may elect to use**
- 22 **for the facility alteration locally sourced materials or supplies**
- 23 **that are substantially similar to those required by the**
- 24 **manufacturer or distributor, subject to the approval of the**
- 25 **manufacturer or distributor.**
- 26 (2) Require, coerce, or attempt to coerce a new motor vehicle
- 27 dealer in Indiana to divest ownership of or management in
- 28 another line or make of motor vehicles that the dealer has
- 29 established in its dealership facilities with the prior written
- 30 approval of the manufacturer or distributor.

1 (3) Establish or acquire wholly or partially a franchisor owned
 2 outlet engaged wholly or partially in a substantially identical
 3 business to that of the franchisee within the exclusive territory
 4 granted the franchisee by the franchise agreement or, if no
 5 exclusive territory is designated, competing unfairly with the
 6 franchisee within a reasonable market area. A franchisor is not
 7 considered to be competing unfairly if operating:

8 (A) a business for less than two (2) years;

9 (B) in a bona fide retail operation that is for sale to any
 10 qualified independent person at a fair and reasonable price; or

11 (C) in a bona fide relationship in which an independent person
 12 has made a significant investment subject to loss in the
 13 business operation and can reasonably expect to acquire
 14 majority ownership or managerial control of the business on
 15 reasonable terms and conditions.

16 **(4) Require a dealer, as a condition of granting or continuing**
 17 **a franchise, approving the transfer of ownership or assets of**
 18 **a new motor vehicle dealer, or approving a successor to a new**
 19 **motor vehicle dealer to:**

20 (A) construct a new dealership facility;

21 (B) modify or change the location of an existing dealership;
 22 or

23 (C) grant the manufacturer or distributor control rights
 24 over any real property owned, leased, controlled, or
 25 occupied by the dealer.

26 **(5) Prohibit a dealer from representing more than one (1) line**
 27 **make of motor vehicles from the same or a modified facility**
 28 **if:**

29 (A) reasonable facilities exist for the combined operations;

30 (B) the dealer meets reasonable capitalization
 31 requirements for the original line make and complies with
 32 the reasonable facilities requirements of the manufacturer
 33 or distributor; and

34 (C) the prohibition is not justified by the reasonable
 35 business considerations of the manufacturer or distributor.

36 ~~This subdivision does~~ Subdivisions (3) through (5) do not apply to
 37 recreational vehicle manufacturer franchisors.

38 **(b) This section does not prohibit the enforcement of a voluntary**
 39 **agreement between the manufacturer or distributor and the**
 40 **franchisee where separate and valuable consideration has been**
 41 **offered and accepted.**

42 SECTION 3. IC 9-32-13-27 IS ADDED TO THE INDIANA CODE
 43 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 44 1, 2013]: Sec. 27. (a) It is an unfair practice for a manufacturer or
 45 distributor to do the following:

46 (1) Cancel or terminate a franchise or selling agreement of a

1 franchisee, or fail or refuse to extend or renew a franchise or
 2 selling agreement upon the franchise's or selling agreement's
 3 expiration, without good cause or notice to the franchisee by
 4 certified mail, return receipt requested:

5 (A) at least ninety (90) days before the cancellation or
 6 termination; or

7 (B) at least ten (10) days before the cancellation or
 8 termination if any of the following apply:

9 (i) The franchisee 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 business days, unless the abandonment or
 13 closure is due to an act of God or another act over which
 14 the franchisee has no control.

15 (ii) The franchisee or another operator of the franchise
 16 has been convicted of or pled guilty to an offense
 17 punishable by at least one (1) year of imprisonment.

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

20 (iv) The license of the dealer is revoked under IC 9-32-11
 21 or IC 9-32-16.

22 (v) The dealer commits fraud.

23 (2) Offer a renewal, replacement, or succeeding franchise or
 24 selling agreement that substantially changes or modifies the
 25 sales and service obligations, facilities standards, capital
 26 requirements, or other terms of the original franchise or
 27 agreement of a franchisee without notice to the franchisee by
 28 certified mail, return receipt requested, at least ninety (90)
 29 days before the expiration or termination of the original
 30 franchise or agreement.

31 Notice provided under this subsection must include a detailed
 32 statement setting forth the specific grounds for the proposed
 33 action.

34 (b) For purposes of subsection (a)(1), the following do not
 35 constitute good cause, provided that no unfair practice is
 36 committed under IC 9-32-13-12 and no transfer, sale, or
 37 assignment is made in violation of IC 9-32-13-22:

38 (1) A change of ownership or executive management of a
 39 dealership.

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

42 (3) Ownership of, investment in, participation in the
 43 management of, or holding a license for the sale of any line
 44 make of new motor vehicles by a franchisee or an owner of an
 45 interest in a franchise.

46 (c) Good cause exists under subsection (a)(1) with respect to all
 47 franchisees of a line make if the manufacturer of the line make

1 permanently discontinues the manufacture or assembly of the line
2 make.

3 (d) Not more than thirty (30) days after a franchisee receives
4 notice under subsection (a), the franchisee may protest the
5 proposed action.

6 SECTION 4. IC 9-32-13-28 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2013]: Sec. 28. (a) This section applies when a dealer requests
9 payment from a manufacturer or distributor following:

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

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

15 (b) Not more than ninety (90) days after a manufacturer or
16 distributor receives a request for payment from a dealer described
17 in subsection (a), the manufacturer or distributor shall pay to the
18 dealer the following amounts for items that are in the dealer's
19 inventory or possession at the time of termination, cancellation,
20 nonrenewal, or discontinuance, that the dealer delivers to the
21 manufacturer or distributor, and as to which the dealer conveys
22 clear title to the manufacturer or distributor under subsection (c):

23 (1) For:

24 (A) current model year motor vehicles; or

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

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

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

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

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

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

44 (4) For signs that bear a trademark or trade name, that the
45 dealer was required by the manufacturer or distributor to
46 purchase, and that the dealer purchased within three (3) years
47 of the termination, cancellation, nonrenewal, or

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

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

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

11 SECTION 5. IC 9-32-13-29 IS ADDED TO THE INDIANA CODE
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 13 1, 2013]: **Sec. 29. (a) This section applies when a manufacturer or
 14 distributor terminates, cancels, or fails to renew a franchise
 15 between the manufacturer or distributor and a dealer, unless the
 16 termination, cancellation, or failure to renew is due to any of the
 17 following:**

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

19 (2) The dealer's license is revoked under IC 9-32-11 or
 20 IC 9-32-16.

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

22 (4) The dealer commits fraud.

23 (5) The dealer has abandoned business operations or
 24 otherwise failed to conduct sales and service operations
 25 during regular business hours for at least seven (7)
 26 consecutive days, unless the abandonment or closure is due to
 27 an act of God or another act over which the franchise has no
 28 control.

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

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

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

37 (B) the total annual lease payments for one (1) year;
 38 subject to damages mitigated by the dealer under the terms of
 39 the lease.

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

45 (c) A manufacturer or distributor may discharge the
 46 manufacturer's or distributor's obligations under a lease with a
 47 dealer by negotiating with the dealer a lease termination payment,

1 a sublease, or a new lease.

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

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

7 SECTION 6. IC 9-32-13-30 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2013]: **Sec. 30. (a) A manufacturer or distributor may not coerce
10 or require a dealer to:**

11 (1) make an improvement to the dealer's facilities; or
12 (2) install signs or other franchisor image elements;
13 that would result in replacing or substantially altering
14 improvements or image elements that the dealer made or installed
15 during the immediately preceding seven (7) years as required by
16 the manufacturer or distributor, unless the improvement or
17 installation of signs or visual elements is necessary to comply with
18 the health or safety laws of the state or to sell, service, or display a
19 new motor vehicle due to the unique technology of the new motor
20 vehicle.

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

23 (c) This section does not apply to a recreational vehicle
24 manufacturer franchisor.

25 SECTION 7. IC 9-32-14-4, AS ADDED TO THE INDIANA CODE
26 BY SEA 537-2013, SECTION 78, IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 4.**

28 (a) This section does not apply to damage to:

- 29 (1) glass;
30 (2) radios;
31 (3) tires; ~~and~~
32 (4) **air bags;**
33 (5) **navigation systems;**
34 (6) **DVD players;**
35 (7) **voice command devices;**
36 (8) **hands free technology; and**
37 (9) **bumpers;**

38 when replaced by identical manufacturer's original equipment.

39 (b) Any uncorrected **damage** or **any** corrected damage to a new
40 motor vehicle that exceeds four percent (4%) of the manufacturer's
41 suggested retail price (as defined in 26 U.S.C. 4216), as measured by
42 retail repair costs, must be disclosed **by the dealer** in writing before
43 delivery of the motor vehicle to ~~an~~ **the** ultimate purchaser."

- 1 Delete pages 3 through 8.
(Reference is to EHB 1386 as printed March 27, 2013.)

Senator MERRITT