

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1222 be amended to read as follows:

- 1 Page 61, line 13, after "(a)" insert "**This section expires December**
- 2 **31, 2012.**
- 3 **(b)".**
- 4 Page 61, line 16, delete "(b)" and insert "(c)".
- 5 Page 61, line 21, delete "(c)" and insert "(d)".
- 6 Page 61, line 28, delete "(d)" and insert "(e)".
- 7 Page 61, line 29, delete "(c);" and insert "(d);".
- 8 Page 61, line 41, delete "(e)" and insert "(f)".
- 9 Page 62, between lines 18 and 19, begin a new paragraph and insert:
- 10 "**Sec. 25. (a) This section applies beginning January 1, 2013.**
- 11 **(b) This section does not apply to the:**
- 12 **(1) relocation of a new motor vehicle dealer to a location that**
- 13 **is not more than two (2) miles from its established place of**
- 14 **business; or**
- 15 **(2) reopening or replacement in a relevant market area of a**
- 16 **closed dealership that has been closed within the preceding**
- 17 **year, if the established place of business of the reopened or**
- 18 **replacement dealer is within two (2) miles of the established**
- 19 **place of business of the closed dealership.**
- 20 **(c) This section does not apply to a new motor vehicle dealer**
- 21 **located in a county having a population of more than one hundred**
- 22 **thousand (100,000) if:**
- 23 **(1) the new motor vehicle dealer relocates to a site that is**
- 24 **located at a distance greater than the existing distance of**
- 25 **another new motor vehicle dealer of the same line make**
- 26 **before the relocation; and**
- 27 **(2) the site of the relocation is outside an area that is within a**
- 28 **radius of four (4) miles from another new motor vehicle**
- 29 **dealer of the same line make.**
- 30 **(d) Before a franchisor enters into a franchise establishing or**

1 relocating a new motor vehicle dealer within a relevant market
 2 area where the same line make is represented, the franchisor shall
 3 give written notice to each new motor vehicle dealer of the same
 4 line make in the relevant market area of the franchisor's intention
 5 to establish an additional dealer or to relocate an existing dealer
 6 within that relevant market area.

7 (e) Not later than thirty (30) days after:

8 (1) receiving the notice provided for in subsection (d); or

9 (2) the end of any appeal procedure provided by the
 10 franchisor;

11 a new motor vehicle dealer may bring an action before the division
 12 to determine whether good cause exists for the establishing or
 13 relocating of a proposed new motor vehicle dealer. If an action is
 14 filed, the franchisor may not establish or relocate the proposed new
 15 motor vehicle dealer until the division has rendered a decision on
 16 the matter. An action brought under this section shall be given
 17 precedence over all other matters pending before the division.

18 (f) In determining whether good cause exists for establishing or
 19 relocating an additional new motor vehicle dealer for the same line
 20 make, the division shall take into consideration the existing
 21 circumstances, including the following:

22 (1) Permanency of the investment.

23 (2) Effect on the retail new motor vehicle business and the
 24 consuming public in the relevant market area.

25 (3) Whether it is injurious or beneficial to the public welfare.

26 (4) Whether the new motor vehicle dealers of the same line
 27 make in that relevant market area are providing adequate
 28 competition and convenient consumer care for the motor
 29 vehicles of that line make in the market area, including the
 30 adequacy of motor vehicle sales and qualified service
 31 personnel.

32 (5) Whether the establishment or relocation of the new motor
 33 vehicle dealer would promote competition.

34 (6) Growth or decline of the population and the number of
 35 new motor vehicle registrations in the relevant market area.

36 (7) The effect on the relocating dealer of a denial of its
 37 relocation into the relevant market area.

38 (g) Subsection (c) applies to:

39 (1) a new motor vehicle dealer that before January 1, 2013,
 40 had been engaged in the process of relocating but had not
 41 physically relocated to the new intended site by the January
 42 1, 2013; or

43 (2) a new motor vehicle dealer that begins engaging in the
 44 process of relocating on or after January 1, 2013."

45 Page 62, line 19, delete "Sec. 25." and insert "Sec. 26."

46 Page 62, line 25, delete "Sec. 26." and insert "Sec. 27."

1 Page 62, between lines 34 and 35, begin a new paragraph and insert:
 2 **"Sec. 28. (a) This section applies beginning January 1, 2013.**
 3 **(b) A dealer who is injured by an unfair practice set forth in this**
 4 **chapter may file a complaint or petition with the division.**
 5 **(c) A dealer may not file a complaint or petition with the**
 6 **division based on an alleged violation of this chapter by a**
 7 **manufacturer or distributor unless the dealer serves a demand for**
 8 **mediation upon the manufacturer or distributor:**
 9 **(1) before; or**
 10 **(2) at the same time as;**
 11 **filing the complaint or petition. A demand for mediation must be**
 12 **in writing and served upon the manufacturer or distributor by**
 13 **certified mail at an address designated for the manufacturer or**
 14 **distributor in the licensor's records. The demand for mediation**
 15 **must contain a brief statement of the dispute and the relief sought**
 16 **by the dealer serving the demand.**
 17 **(d) Not later than twenty (20) days after the date the demand for**
 18 **mediation is served under subsection (c), the parties shall mutually**
 19 **select an independent mediator and meet with the mediator for the**
 20 **purpose of attempting to resolve the dispute. The meeting place**
 21 **must be within Indiana at a location selected by the mediator. The**
 22 **mediator may extend the period in which the meeting must occur**
 23 **for good cause shown by either party or upon stipulation of the**
 24 **parties."**

(Reference is to EHB 1222 as printed February 24, 2012.)

Senator WYSS