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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: H-4814.1/00

ATTY/TYPIST: KT:rmh

BRIEF DESCRIPTION:

2 SHB 2529 - H AMD  
3 By Representative Clements

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 46.96 RCW  
8 to read as follows:

9 (1) Notwithstanding the terms of a franchise agreement, a  
10 manufacturer, distributor, factory branch, or factory representative,  
11 or an agent, officer, parent company, wholly or partially owned  
12 subsidiary, affiliated entity, or other person controlled by or under  
13 common control with a manufacturer, distributor, factory branch, or  
14 factory representative, shall not:

15 (a) Discriminate between new motor vehicle dealers by selling or  
16 offering to sell a like vehicle to one dealer at a lower actual price  
17 than the actual price offered to another dealer for the same model  
18 similarly equipped;

19 (b) Discriminate between new motor vehicle dealers by selling or  
20 offering to sell parts or accessories to one dealer at a lower actual  
21 price than the actual price offered to another dealer;

22 (c) Discriminate between new motor vehicle dealers by using a  
23 promotion plan or other similar device that results in a lower actual  
24 price on vehicles, parts, or accessories being charged to one dealer  
25 over another dealer;

26 (d) Discriminate between new motor vehicle dealers by adopting a  
27 method, or changing an existing method, for the allocation, scheduling,  
28 or delivery of new motor vehicles, parts, or accessories to its dealers  
29 that is not fair, reasonable, and equitable. Upon the request of a  
30 dealer, a manufacturer, distributor, factory branch, or factory  
31 representative shall disclose in writing to the dealer the method by  
32 which new motor vehicles, parts, and accessories are allocated,  
33 scheduled, or delivered to its dealers handling the same line or make  
34 of vehicles;

35 (e) Give preferential treatment to some new motor vehicle dealers  
36 over others by refusing or failing to deliver, in reasonable quantities

1 and within a reasonable time after receipt of an order, to a dealer  
2 holding a franchise for a line or make of motor vehicles sold or  
3 distributed by the manufacturer, distributor, factory branch, or  
4 factory representative, a new vehicle, parts, or accessories, if the  
5 vehicle, parts, or accessories are being delivered to other dealers, or  
6 require a dealer to purchase unreasonable advertising displays or other  
7 materials, or unreasonably require a dealer to remodel or renovate  
8 existing facilities as a prerequisite to receiving a model or series of  
9 vehicles;

10 (f) Compete with a new motor vehicle dealer by acting in the  
11 capacity of a new motor vehicle dealer, or by owning, operating, or  
12 controlling, whether directly or indirectly, a motor vehicle dealership  
13 in this state. It is not, however, a violation of this subsection for:

14 (i) A manufacturer, distributor, factory branch, or factory  
15 representative to own or operate a dealership for a temporary period,  
16 not to exceed two years, during the transition from one owner of the  
17 dealership to another where the dealership was previously owned by a  
18 franchised dealer and is currently for sale to any qualified  
19 independent person at a fair and reasonable price. The temporary  
20 operation may be extended for one twelve-month period on petition of  
21 the temporary operator to the department. The matter will be handled  
22 as an adjudicative proceeding under chapter 34.05 RCW. The temporary  
23 operator has the burden of proof to show justification for the  
24 extension and a good faith effort to sell the dealership to an  
25 independent person at a fair and reasonable price;

26 (ii) A manufacturer, distributor, factory branch, or factory  
27 representative to own or operate a dealership in conjunction with an  
28 independent person in a bona fide business relationship program for the  
29 purpose of broadening the diversity of its dealer body and enhancing  
30 opportunities for qualified persons who are part of a group who have  
31 historically been underrepresented in its dealer body, or other  
32 qualified persons who lack the resources to purchase a dealership  
33 outright, and where the independent person: (A) Has made a  
34 significant, bona fide capital investment in the dealership that is  
35 subject to loss; (B) has an ownership interest in the dealership; and  
36 (C) operates the dealership under a bona fide written agreement with  
37 the manufacturer, distributor, factory branch, or factory  
38 representative under which he or she will acquire all of the ownership  
39 interest in the dealership within a reasonable period of time and under

1 reasonable terms and conditions. The manufacturer, distributor,  
2 factory branch, or factory representative has the burden of proof of  
3 establishing that the acquisition of the dealership by the independent  
4 person under the program was made within a reasonable period of time  
5 and under reasonable terms and conditions;

6 (iii) A manufacturer, distributor, factory branch, or factory  
7 representative to own or operate a dealership in conjunction with an  
8 independent person in a bona fide business relationship where the  
9 independent person: (A) Has made a significant, bona fide capital  
10 investment in the dealership that is subject to loss; (B) has an  
11 ownership interest in the dealership; and (C) operates the dealership  
12 under a bona fide written agreement with the manufacturer, distributor,  
13 factory branch, or factory representative under which he or she will  
14 acquire all of the ownership interest in the dealership within a  
15 reasonable period of time and under reasonable terms and conditions.  
16 The manufacturer, distributor, factory branch, or factory  
17 representative has the burden of proof of establishing that the  
18 acquisition of the dealership by the independent person was made within  
19 a reasonable period of time and under reasonable terms and conditions.  
20 The number of dealerships operated under this subsection (1)(f)(iii)  
21 may not exceed four percent rounded up to the nearest whole number of  
22 a manufacturer's total of new motor vehicle dealer franchises in this  
23 state;

24 (iv) A truck manufacturer to own, operate, or control a new motor  
25 vehicle dealership that sells only trucks of that manufacturer's line  
26 make with a gross vehicle weight rating of 12,500 pounds or more, and  
27 the truck manufacturer has been continuously engaged in the retail sale  
28 of the trucks at least since January 1, 1993; or

29 (v) A manufacturer to own, operate, or control a new motor vehicle  
30 dealership trading exclusively in a single line make of the  
31 manufacturer if (A) the manufacturer's ownership interest does not  
32 exceed forty-five percent of the total ownership, (B) at the time the  
33 manufacturer first acquires an ownership interest or assumes operation,  
34 the distance between any dealership thus owned or operated and the  
35 nearest unaffiliated motor vehicle dealership trading in the same line  
36 make is not less than fifteen miles, (C) during the period of  
37 ownership, the manufacturer of the line make has no more than five  
38 motor vehicle franchise agreements governing the line make in effect in  
39 this state, and (D) the manufacturer has been continuously engaged, at

1 least since January 1, 1993, in the distribution of motor vehicles of  
2 its own line make through one or more dealerships;

3 (g) Compete with a new motor vehicle dealer by owning, operating,  
4 or controlling, whether directly or indirectly, a service facility in  
5 this state for the repair or maintenance of motor vehicles pursuant to  
6 the manufacturer's new car warranty and extended warranty. Nothing in  
7 this subsection (1)(g), however, prohibits a manufacturer, distributor,  
8 factory branch, or factory representative from owning or operating a  
9 service facility for the purpose of providing or performing  
10 maintenance, repair, or service work on motor vehicles that are owned  
11 by the manufacturer, distributor, factory branch, or factory  
12 representative.

13 (2) Subsection (1)(a), (b), and (c) of this section do not apply to  
14 sales to a motor vehicle dealer: (a) For resale to a federal, state,  
15 or local government agency; (b) where the vehicles will be sold or  
16 donated for use in a program of driver's education; (c) where the sale  
17 is made under a manufacturer's bona fide promotional program offering  
18 sales incentives or rebates; (d) where the sale of parts or accessories  
19 is under a manufacturer's bona fide quantity discount program; or (e)  
20 where the sale is made under a manufacturer's bona fide fleet vehicle  
21 discount program. For purposes of this subsection, "fleet" means a  
22 group of fifteen or more new motor vehicles purchased or leased by a  
23 dealer at one time under a single purchase or lease agreement for use  
24 as part of a fleet, and where the dealer has been assigned a fleet  
25 identifier code by the department of licensing.

26 (3) The following definitions apply to this section:

27 (a) "Actual price" means the price to be paid by the dealer less  
28 any incentive paid by the manufacturer, distributor, factory branch, or  
29 factory representative, whether paid to the dealer or the ultimate  
30 purchaser of the vehicle.

31 (b) "Control" or "controlling" means (i) the possession of, title  
32 to, or control of ten percent or more of the voting equity interest in  
33 a person, whether directly or indirectly through a fiduciary, agent, or  
34 other intermediary, or (ii) the possession, direct or indirect, of the  
35 power to direct or cause the direction of the management or policies of  
36 a person, whether through the ownership of voting securities, through  
37 director control, by contract, or otherwise, except as expressly  
38 provided under the franchise agreement.

1 (c) "Motor vehicles" does not include trucks that are 14,001 pounds  
2 gross vehicle weight and above or recreational vehicles as defined in  
3 RCW 43.22.335.

4 (d) "Operate" means to manage a dealership, whether directly or  
5 indirectly.

6 (e) "Own" or "ownership" means to hold the beneficial ownership of  
7 one percent or more of any class of equity interest in a dealership,  
8 whether the interest is that of a shareholder, partner, limited  
9 liability company member, or otherwise. To hold an ownership interest  
10 means to have possession of, title to, or control of the ownership  
11 interest, whether directly or indirectly through a fiduciary, agent, or  
12 other intermediary.

13 (4) A violation of this section is deemed to affect the public  
14 interest and constitutes an unlawful and unfair practice under chapter  
15 19.86 RCW. If provided in the franchise agreement or by written  
16 agreement of the manufacturer and new motor vehicle dealer, disputes  
17 arising under this section may be resolved under chapter 7.04 RCW."

18 Correct the title.

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